

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1726

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

MEREDITH CORPORATION, an Iowa Corporation,
Plaintiff-Appellant,

vs.

HARPER & ROW, PUBLISHERS, INC.; PAUL HENRY
MUSSEN; JOHN JANEWAY CONGER; and JEROME
KAGAN,

Defendants-Appellees,

BRIAN SUTTON-SMITH, an Individual, and
PRENTICE-HALL, INC., a Delaware Corporation,
Additional Defendants on Counterclaim-Appellants.

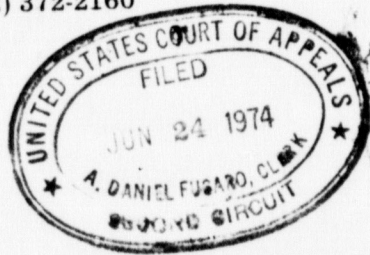
JOINT APPENDIX

Volume I, pp. 1a - 264a

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PROCEEDINGS

Date Ord.
Judgment

Dec 21-73	Filed Complaint. Issued Summons.	1
Jan. 17-74	Filed deft. Harper & Row, Publishers, Inc's notice of taking deposition of plttf. by its employee Charles R. Walther on 2-11-74.	3
Jan. 17-74	Filed deft. Harper & Row, Publishers, Inc's notice of taking deposition of Brian Sutton-Smith on 2-5-74.	2
Jan. 17-74	Filed deft. Harper & Row, Publishers, Inc's notice of taking deposition of Mary Scheet on 2-12-74.	4
Jan. 17-74	Filed deft. Harper & Row, Publishers, Inc's notice of taking deposition of Julie Small on 2-13-74.	5
Feb. 6-74	Filed Stip & Order that the time of defts. Paul Henry Mussen & John Janeway Conger to answer to Conger to answer is extended to 2/22/74.	6
Feb. 6-74	Filed Deft. Harper & Row Publishers Inc. Notice of Deposition of Brian Sutton Smith on 2/5/74..	11
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Feb. 6-74	Filed summons & return-served Jerome Kagan 1-24-74, John J. Conger 1-2-74, Paul H. Mussen 1-8-74, Harper Row Publ. Inc. 1-7-74,	7
Feb. 19-74	Filed Supplemental Summons and marshals ret. Served: Iwattice Hall Inc. on 2/13/74.	15
Feb. 25-74	Filed Reply of Plttf. Meredith Corp., to counterclaim.	16A
Feb. 28-74	Filed plttf's 1st set of interrogs. & requests for production of documents.	17
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Mar. 11-74	Filed Answer of deft. Harper & Row to counterclaim.	19 WJDJ
Mar. 12-74	Filed plttf's 2nd set of interrogs. & requests for production of documents.	20
Mar. 15-74	Filed plttf's 3rd set of interrogs. & requests for production of documents.	
Mar. 28-74	Filed Notice to take deposition upon oral exam. of Lawrence Locke.	23
Mar. 28-74	Filed Notice of resumption of deposition of Julie Small.	22
Mar. 29-74	Filed Interrog. of Additional Deft. Brian Sutton-Smith.	25
Mar. 28-74	Filed Reply & Counterclaim	24
Mar. 28-74	Filed Deft's First set of Interrog and request for Production of Documents etc.	21
Apr 5 74	Filed summons and return served the following: Brian Sutton Smith by Mrs. Smith.	26
Apr 3-74	Filed REPLY TO SUTTON-SMITH COUNTERCLAIM by defts.	EAM 27
Apr 3-74	Filed defts' interrogs, and request for production.	29
Apr 3-74	Filed deft's (Harper & Row) notice to take deposition of add'l deft. Brian Sutton-Smith.	28
Apr 3-74	Filed deft's answers to interrogs. of add'l deft. Brian Sutton-Smith.	30
Apr 3-74	Filed add'l deft. (Brian Sutton-Smith) answers to interrogs in response to the request for production of documents.	31
Apr 7, 74	Filed Deft's compilation of approximately 400 Passages from CHILD PSYCHOLOGY in response to additional Deft.	36 (AC)
Apr 13, 74	Filed plttf's ANSWERS to deft's interrogs and request for Production of Documents.	32
Apr 13, 74	Filed Deft's Notice to take Depositions on oral examinations Meredith Corp, et ano.	33
Apr 17, 74	Filed Deft's Complaint of Deft. Conger to answer to deft's interrogs etc.-Ret. 5-20-74.	34
Apr 20, 74	Filed Responses & Objections of Defts Mussen, Conger & Kagan to plttf's set of interrogs & requests for Production of Documents.	35

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D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
May 21, 74	Filed Pltff's Notice to take Depositions Upon Oral Examination of Deft. Harper & Row.
May 21, 74	Filed Pltff's 2nd Set of interrogs to Deft Harper & Row, Publishers Inc.
May 22, 74	Filed Pltff's Proof of Service to Deft's by Nathaniel J. Bickford.
May 22, 74	Filed Deft's (Mussen, Conger & Kagan) Notice to take Deposition on Oral Examination
May 24-74	Filed Interim Memorandum & Order-Defts. Mussen, Conger & Kagan motion for preliminary injunction granted. Parties to appear before me at 3:30 p.m. on May 24, 1974, for the fashioning of appropriate relief. Trial on the merits set for June 10, 1974 at 2:00 p.m. Trial of the issue of damages is deferred as is the cause of action for damages for libel & unfair competition & discovery in connection with said causes of action are stayed. A full opinion follows. So Ordered--Owen, J. Mailed notices.
May 24, 74	Filed Pltff's on the counterclaim Notice of Appeal - Mailed copies to: Edward A. Miller, Esq., 10 East 53rd Street, NYC 10022, and John C. Lankenau, Esq., 30 Rockefeller Plaza, N.Y.C. 10020.
May 24, 74	Filed Defts surety Bond in the sum of \$75,000. Seaboard Surety Co.
May 30-74	Filed OPINION #40,754(Defts. motion to enjoin the sale of a competing textbook)The preliminary injunction is granted.--Owen, J.
May 29-74	Filed Preliminary Injunction restraining & enjoining pltff. & Addt'l defts. Defts. to give security in the sum of \$75,000. for the payment of such costs & damages. Bond to be approved by the Court or the Clerk of the Court no later than May 24, 1974 at 5p.m.--Owen, J. Mailed notices.
May 30-74	Filed true copy of U.S.C.A. mandate-It is ordered that upon consideration of the motion made herein by counsel for the appellant Meredith Corp by dated 5-28-74 for a stay of the preliminary injunction herein and of the trial pending appeal; to add the appeal to the general calendar to be heard before the summer recess that the stay of the U.S.D.C. for S.D.N.Y. be and it hereby is continued until the argument of the motion for a stay which is set for Tuesday June 4, 1974. It is further ordered that the appellant shall file a bond fixed in the sum of \$25,000. on or before 5 p.m. Tuesday, May 28, 1974. Mailed notices.
May 30-74	Filed bond in the sum of \$25,000. by Meredith Corp--U.S. Fidelity & Guaranty Co.
June 3-74	Filed addt'l deft. (Prentice-Hall) answers to interrogs.
Jun4, 74	Filed Afft. in opposition to Deft's motion for Preliminary Injunction and other relief.
Jun 4, 74	Filed Deft's memo of law in support of motion for Preliminary Inj. 48
6-4-74	Filed Deft's proposed findings of fact and concl. of Law.
Jun 4, 74	Filed Reply Memo of Pltff Meredith
Jun4, 74	Filed Afft. in support of motion for Preliminary Inj. & etc. 50

COMPLAINT (Filed December 21, 1973)
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

3a

MEREDITH CORPORATION,
an Iowa corporation,

Plaintiff,

v.

HARPER & ROW, PUBLISHERS, INC.,
a Delaware corporation; PAUL HENRY
MUSSEN, an individual; JOHN JANEWAY
CONGER, an individual; and JEROME
KAGAN, an individual,

Defendants.

Civil Action No.

73 CIV 5446

COMPLAINT

I. THE PARTIES

1. Plaintiff, MEREDITH CORPORATION, is a corporation incorporated under the laws of the State of Iowa, having a place of business within this district at 750 Third Avenue, New York, N.Y. 10017.

2. Defendant HARPER & ROW, PUBLISHERS, INC. is, on information and belief, a corporation incorporated under the laws of the State of Delaware, having its principal place of business at 10 East 53rd Street, New York, N.Y. 10022.

Upon information and belief: PAUL HENRY MUSSEN is an individual and a resident of the State of California, residing at 120 Hill Road, Berkeley, California; defendant JOHN JANEWAY CONGER is an individual and a resident of the State of Colorado, residing at 130 S. Birch, Denver, Colorado; and JEROME KAGAN is an individual and a resident of the State of Massachusetts, residing at 210 Clifton Street, Belmont, Massachusetts. These individuals are indicated to be authors of, and copyright owners in, a book entitled Child Development and Personality, published by defendant HARPER & ROW, PUBLISHERS, INC., which book forms a part of the subject matter of this lawsuit.

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Complaint

Upon information and belief, the individual defendants have joined with the corporate defendant in sending a notice of infringement to plaintiff who received the notice in this district.

II. BACKGROUND OF THE ACTION

3. On September 25, 1973, all defendants, acting through their agent, transmitted a written notice of copyright infringement to plaintiff through its agent and its president, Mr. E. T. Meredith, III. The notice falsely charges plaintiff, by publication of its book, Child Psychology, a scientific text designed for developmental psychology courses at the college level, with copying defendants' book entitled Child Development and Personality. Defendants have also charged plaintiff with infringement of copyrights which they claim in said book.

4. The defendants' alleged copyrights in the book Child Development and Personality are invalid for failure to comply with the requirements of the Copyright Law, Title 17, United States Code. Plaintiff has not copied, infringed or otherwise misappropriated the defendants' alleged copyright in said book by publishing the book Child Psychology.

5. Upon information and belief, defendants' agents have deliberately, falsely and maliciously disparaged plaintiff and plaintiff's book Child Psychology both orally and in writing to the publishing community and to the scientific/academic community who are the potential purchasers of plaintiff's book and the rights thereto. Defendants agents have deliberately indicated to these potential purchasers that plaintiff's book is a copy of defendants' book, that it was authored in an unethical and/or dishonest manner and that because of the alleged manner in which the book was published, it should not be purchased, all the while knowing these charges to be totally untrue and without foundation. Upon information and belief, as a result of defendants' knowingly false disparagement of plaintiff and its book, a potential purchaser of plaintiff's rights in its book declined to purchase these rights. Through this

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Complaint

and other ways, plaintiff has been substantively injured by defendants' knowingly false disparagement of plaintiff and its book.

COUNT I

Declaratory Judgment

6. The allegations of Paragraphs 1-5 of this complaint are hereby reincorporated by reference. This is a count for a declaratory judgment of invalidity of defendants' alleged copyright in the book Child Development and Personality for failure to comply with the copyright laws, Title 17, United States Code. Jurisdiction and venue for this count are founded upon Title 28, United States Code 2201, 1338, 1400(a), 1391(a) and 1391(c). An actual controversy exists between the parties and this cause of action arose in this district, where plaintiff and defendant HARPER & ROW, PUBLISHERS, INC. sell their respective books.

COUNT II

Declaratory Judgment

7. The allegations of Paragraphs 1-5 of this complaint are hereby reincorporated by reference. This is a count for declaratory judgment of non-infringement of defendants' alleged copyright in the book Child Development and Personality by plaintiff. Jurisdiction and venue for this count are founded upon Title 28, United States Code, 2201, 1338 and 1400(a) and 1391. An actual controversy exists between the parties and this cause of action arose in this district where plaintiff and defendant HARPER & ROW PUBLISHERS, INC. sell their respective books.

COUNT III

Libel and Slander Per Se, Trade Libel and
Slander, and Disparagement

8. The allegations of Paragraphs 1-5 of this complaint are hereby reincorporated by reference. This is a count for libel per se, slander per se, trade libel and slander and

Complaint

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false disparagement of plaintiff and its publication by defendants and their agents. Jurisdiction and venue for this count are founded upon Title 28, United States Code, 1332, 1338(b), 1391(a), 1391(c) and upon this court's powers of pendant jurisdiction. This cause of action arose in this district where plaintiff conducts its book business and where it was injured. There is diversity of citizenship between the parties and the amount in controversy, exclusive of interest and costs, is in excess of \$10,000.00

COUNT IV

Unfair Competition

The allegations of Paragraphs 1-5 and 8 are hereby reincorporated by reference. This is a count for unfair competition by reason of defendants' activities referred to above.

WHEREFORE, plaintiff prays that:

A. The court declare defendants' alleged copyrights in the book Child Development and Personality invalid and not infringed by plaintiff's book Child Psychology and that the court enjoin defendants from asserting said copyrights against plaintiff or any of its successors in interest;

B. That the court award plaintiff both actual and punitive damages resulting: (a) from defendants' libel, slander and false disparagement of plaintiff; and (b) from defendants' unfair competition with plaintiff and that the court enjoin defendants from any further such activities; and

C. That the court award plaintiff its costs and attorney's fees incurred in this action and such other, further and different relief as may be deemed appropriate.

MEREDITH CORPORATION

By Howard Abrahams

Howard Abrahams
Meredith Corporation
1345 Avenue of the Americas
New York, N.Y. 10019
(212) 757-1400

Complaint

7a

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ANSWER AND COUNTERCLAIM (Filed February 8, 1974)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

8a

-----x

MEREDITH CORPORATION,	:		
	:		
Plaintiff,	:		
	:	73 CIV 5446	JMC
-against-	:		
	:		
HARPER & ROW, PUBLISHERS, INC.;	:		
PAUL HENRY MUSSEN, JOHN JANEWAY	:		
CONGER, and JEROME KAGAN,	:		
	:		
Defendants,	:		
	:		
BRIAN SUTTON-SMITH, an individual	:		
and PRENTICE-HALL, INC., a	:		
Delaware Corporation,	:		
	:		
Additional Defendants	:	ANSWER AND	
on Counterclaim.	:	COUNTERCLAIM	

-----x

Defendants, for their Answer and Counterclaim in the above-entitled action, by their attorneys, answering the Complaint herein.

1. Admit the allegations contained in paragraph 1 of the Complaint.
2. Admit the allegations contained in paragraph 2 of the Complaint, except allege that Child Development and Personality (hereinafter sometimes referred to as "Defendants' Book") is presently in its third edition, that the copyright on the first edition of said book, first published in 1956, is in the name of Defendant Harper & Row and that the copyrights on the second and third editions of Defendants' Book, first published in 1963 and 1969, respectively, are in the names of the Individual Defendants.
3. Admit the allegations contained in paragraph 3 of the Complaint, but deny the falsity of Defendants' assertion that Child Psychology (hereinafter sometimes referred to as "Plaintiff's Book") copied Defendants' Book.
4. Deny each and every allegation contained in paragraph 4 of

Answer and Counterclaim

the Complaint.

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5. Deny each and every allegation contained in paragraph 5 of the Complaint except that the Individual Defendants admit, and Defendant Harper & Row on information and belief admits, that Individual Defendants have stated in substance, to various persons, that Plaintiff's Book was substantially similar to, and apparently copied from, Defendants' Book.

ANSWERING COUNT I

6. Answering the allegations contained in the first sentence of paragraph 6 of the Complaint, Defendants repeat and reallege, as if fully set forth herein, paragraphs 1 through 5 of this Answer and Counterclaim. Defendants admit the remaining sentences of paragraph 6 of the Complaint, except deny that Plaintiff is entitled to a declaratory judgment of invalidity of the copyrights in the current and previous editions of Defendants' Book for failure to comply with the copyright laws.

ANSWERING COUNT II

7. Answering the allegations contained in the first sentence of paragraph 7 of the Complaint, Defendants repeat and reallege, as if fully set forth herein, paragraphs 1 through 5 of this Answer and Counterclaim. Defendants admit the remaining sentences of paragraph 7 of the Complaint, except deny that Plaintiff is entitled to a declaratory judgment that Plaintiff's Book does not infringe the copyrights in the current and previous editions of Defendants' Book.

ANSWERING COUNT III

8. Answering the allegations contained in the first sentence of paragraph 8 of the Complaint, Defendants repeat and reallege, as if fully set forth herein, paragraphs 1 through 5 of this Answer and Counterclaim. Defendants admit the allegations contained in paragraph 8 of the Complaint as to venue and diversity of citizenship between the parties but deny knowledge or information sufficient to form a belief as to the amount in controversy and the existence of diversity and/or

Answer and Counterclaim 10a
pendant jurisdiction. Except as expressly set forth above, Defendants
deny each and every allegation contained in paragraph 8 of the Complaint.

ANSWERING COUNT IV

9. Answering the allegations contained in the first sentence
of the unnumbered paragraph under Count IV of the Complaint, Defendants
repeat and reallege, as if fully set forth herein, paragraphs 1 through 5
and 8 of this Answer and Counterclaim. Defendants deny the second
sentence of said unnumbered paragraph.

FIRST DEFENSE TO ALL COUNTS

10. The Complaint fails to state a cause of action.

SECOND DEFENSE TO COUNTS III AND IV

11. The statements made by the Individual Defendants concerning
Plaintiff's Book are true.

THIRD DEFENSE TO COUNTS III AND IV

12. The Plaintiff Meredith, Inc., and the imprint Appleton-Century-
Crofts, under which Plaintiff's Book was published, are well known among
authors, scholars and members of the general public.

13. The material contained in Plaintiff's Book is a matter of
public interest and public concern and the statements of the Individual
Defendants concerning Plaintiff's Book were made without malice, in good
faith and in the belief that the same were true and with reasonable cause
for such belief, and, as such, are protected under the First and
Fourteenth Amendments of the Constitution of the United States.

FOURTH DEFENSE TO COUNTS III AND IV

14. The Plaintiff's Book purports to be a learned treatise on
child development and psychology and, as such, is subject to the doctrine
of fair comment. The comments of the Individual Defendants concerning
Plaintiff's Book were uttered without malice and are within the doctrine
of fair comment.

Answer and Counterclaim
FIRST COUNTERCLAIM AGAINST PLAINTIFF
AND ADDITIONAL DEFENDANTS

11a

15. Upon information and belief, Additional Defendant Brian Sutton-Smith is an individual and resident of the State of New York, residing at 62 Beechwood Terrace, Yonkers, New York. Additional Defendant Brian Sutton-Smith is indicated to be the author of Plaintiff's Book.

16. Upon information and belief, Additional Defendant Prentice-Hall, Inc. is a Delaware corporation, having its principal place of business in Englewood, New Jersey, and having a place of business at 521 Fifth Avenue, New York, N. Y. 10011.

17. Jurisdiction and Venue for this counterclaim are founded on Title 28, United States Code §§ 1338, 1400(a).

18. Prior to April, 1956, Defendants Mussen and Conger, who then were and ever since have been citizens of the United States, created and wrote an original book entitled Child Development & Personality (hereinafter sometimes referred to as "First Edition of Defendants' Book").

19. The First Edition of Defendants' Book contains a large amount of material wholly original with Defendants Mussen and Conger and is copyrightable under the laws of the United States.

20. Between April 11, 1956, and April 16, 1956, Defendant Harper & Row complied in all respects with the Copyright Law, Title 17, United States Code and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said book and received from the Register of Copyrights a certificate of registration dated and identified as follows: April 16, 1956, Class A, No. A231615.

21. Since April 16, 1956, said book has been published by Defendant Harper & Row and all copies of it made by Defendant Harper &

Answer and Counterclaim

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Row or under its authority or license have been printed, bound and published in strict conformity with the provisions of the Copyright Law, Title 17, United States Code, and all other laws governing copyright.

22. Since April 16, 1956, Defendant Harper & Row has been and still is the sole proprietor of all rights, title and interest in and to the copyright in said book.

23. Prior to January, 1963, Defendants Mussen, Conger, and Kagan created and wrote a second edition to Child Development & Personality, (hereinafter sometimes referred to as the "Second Edition of Defendants' Book"). Defendant Kagan was then and ever since has been a citizen of the United States.

24. The Second Edition of Defendants' Book contains a large amount of material wholly original with Defendants Mussen, Conger and Kagan and is copyrightable subject matter under the laws of the United States.

25. Between January 30, 1963, and February 8, 1963, Defendants Mussen, Conger and Kagan complied in all respects in the Copyright Law, Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said book and received from the Register of Copyrights a certificate of registration dated and identified as follows: February 8, 1963, Class A, No. A609163.

26. Since February 8, 1963, said second edition has been published by Defendant Harper & Row and all copies of it made by Defendant Harper & Row or under its authority or license have been printed, bound and published in strict conformity with the provisions of the Copyright Law, Title 17, United States Code, and all other laws governing copyright.

Answer and Counterclaim

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27. Since February 8, 1963, Defendants Mussen, Conger, and Kagan have been and still are the sole proprietors of all rights, title and interest in and to the copyright in said second edition.

28. Prior to March, 1969, Defendants Mussen, Conger and Kagan created and wrote the third edition of Child Development & Personality (hereinafter sometimes referred to as the "Third Edition of Defendants' Book").

29. The Third Edition of Defendants' Book contains a large amount of material wholly original with Defendants Mussen, Conger and Kagan and is copyrightable subject matter under the laws of the United States.

30. Between March 24, 1969, and July 20, 1972, Defendants Mussen, Conger and Kagan complied in all respects with the Copyright Law, Title 17, United States Code, and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said book, and received from the Register of Copyrights a certificate of registration dated and identified as follows: July 20, 1972, Class A, No. 352759.

31. Since July 20, 1972, said third edition has been published by Defendant Harper & Row and all copies of it made by Defendant Harper & Row or under its authority or license have been printed, bound and published in strict conformity with the provisions of the Copyright Law, Title 17, United States Code, and all other laws governing copyright.

32. Since July 20, 1972, Defendants Mussen, Conger, and Kagan have been and still are the sole proprietors of all rights, title and interest in and to the copyright in said third edition.

33. Defendants have secured international copyright protection in numerous foreign countries for the three editions of Defendants' Book.

Answer and Counterclaim

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34. Defendants' Book is a college textbook primarily intended for use in introductory courses in child psychology. Defendants' Book has enjoyed substantial success from its first introduction and is presently one of two leading textbooks in the field. The three editions of Defendants' Book have sold in excess of 700,000 copies.

35. Defendants' Book is also used for research purposes by scholars and others since it incorporates the results of extensive time and effort by the authors in reporting and synthesizing in each new edition the most recent studies and conclusions in the field.

36. After February, 1973, Plaintiff and Additional Defendant Brian Sutton-Smith infringed the copyrights referred to in paragraphs 20, 25, and 30 above by writing, publishing and placing upon the market Plaintiff's Book which is substantially similar to the Third Edition of Defendants' Book and upon information and belief was copied from the Third Edition of Defendants' Book.

37. Copies of the Third Edition of Defendants' Book and of Plaintiff's Book are being simultaneously filed with the Court as Exhibits 1 and 2, respectively.

38. Upon information and belief, Plaintiff's Book was one of the publications resulting from a division set up by Plaintiff, known as the Managed Textbook Division, the purpose and effect of which was to utilize in-house editors and free lance writers in the preparation of textbooks so as to appropriate to itself the fruits of the scholarship and efforts of others, including Defendants Mussen, Conger and Kagan, and to offer the resulting textbooks to the academic community as wholly original works. In subjects such as child psychology where intensive research and significant new developments are constantly taking place, the authorship and publication of originally written college textbooks serves a uniquely valuable and socially worthwhile purpose, in reporting and synthesizing, for the benefit of scholars and students, the most recent studies and conclusions in the field. The activities of Plaintiff's Managed Textbook

Answer and Counterclaim

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Division discourage such original authorship and scholarship by depriving the authors and their publishers of the full benefits of their efforts.

39. Prior to the commencement of this action, Defendant Harper & Row notified Plaintiff of the infringement of the copyrights referred to in paragraphs 20, 25 and 30 above. Plaintiff initially discontinued distribution of Plaintiff's Book and excluded such book from the sale of its Appleton-Century-Crofts titles to Additional Defendant Prentice-Hall, Inc.. However Defendants have received information that distribution of Plaintiff's Book has resumed or will shortly resume through Additional Defendant Prentice-Hall, Inc..

40. On information and belief, prior to initially discontinuing distribution, Plaintiff sold in excess of 50,000 copies of Child Psychology, thereby infringing the copyrights in Defendants' Books and engaging in unfair trade practices and unfair competition against Defendants to Defendants' irreparable damage.

41. Individual Defendants are the authors and Defendant Harper & Row is the publisher, of a book entitled Readings in Child Development and Personality, Second Edition which is sold by Defendant Harper & Row for use in connection with Defendants' Book. The Individual Defendants are entitled to receive royalties on sales of Readings in Child Development and Personality. Sales of Readings in Child Development and Personality have declined, as Plaintiff and Additional Defendants could reasonably have foreseen, by reason of the publication and sale of Plaintiff's Book, thereby causing damage to the Defendants.

42. Defendant Harper & Row is the publisher of a book entitled Study Guide--Child Development and Personality which is sold by Defendant Harper & Row for use in connection with Defendant's Book. Sales of Study Guide--Child Development and Personality have declined, as Plaintiff and Additional Defendants could reasonably have foreseen, by reason of the publication and sale of Plaintiff's Book, thereby causing

damage to Defendant Harper & Row.

43. Defendant Harper & Row is the assignee of the rights against Plaintiff and Additional Defendants of two additional persons, Wayne Holtzman and Gardner Murphy (the "Assignors") holding royalty interests in Defendants' Book. Such assignors have suffered a loss of royalties, as Plaintiff and Additional Defendants could reasonably have foreseen, by reason of the publication and sale of Plaintiff's Book.

44. As a result of the sales by Plaintiff of Child Psychology, the sales of Defendants' Book, Readings in Child Development and Personality and Study Guide--Child Development and Personality, have declined substantially. As a result, through October, 1973, Defendant Harper & Row had already suffered a loss of income before taxes in excess of \$150,000, and Defendants Mussen, Conger and Kagan and the two Assignors had lost royalties in excess of \$50,000. Defendants in addition have incurred and will incur substantial expenses from enforcement of their rights herein, including reasonable attorney fees, and have suffered and will suffer additional losses from sales by Plaintiff of Child Psychology.

SECOND COUNTERCLAIM AGAINST PLAINTIFF
AND ADDITIONAL DEFENDANTS

45. Defendants repeat and reallege, as if fully set forth herein, paragraphs 15 through 44 of this Counterclaim.

46. The activities of Plaintiff and Additional Defendants referred to herein constitute unfair trade practices and unfair competition against the Defendants.

WHEREFORE Defendants demand

1. That Judgment be entered dismissing the Complaint herein.

2. That Plaintiff and Additional Defendant be required to pay to Defendants such damages as they have sustained in consequence of the infringement by Plaintiff and Additional Defendants of Defendants' copyrights and the unfair trade practice and unfair competition of Plaintiff and Additional Defendants and to account for all gains, profits, advances derived by Plaintiff and Additional Defendants from such trade practices and unfair competition.

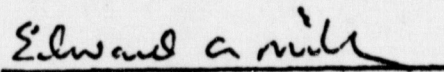
3. That Plaintiff and Additional Defendants be required to pay punitive damages to Defendants.

4. That Plaintiff and Additional Defendants be permanently enjoined from infringing Defendants' copyrights and from publishing, selling, marketing or otherwise disposing of any copies of the book entitled Child Psychology and be required to send a notice to all institutions where Child Psychology was adopted advising that Child Psychology was copied in large part from Child Development & Personality, third edition.

5. That Plaintiff be required to deliver up for destruction all copies of Child Psychology and all plates and other materials for making such copies.

6. That Plaintiff and Additional Defendant pay to Defendants the cost of this action and reasonable attorney fees to be allowed to Defendants by the Court.

7. That Defendants have such other and further relief as is just and proper.


Edward A. Miller
Attorney for Defendant
Harper & Row, Publishers, Inc.
10 E. 53rd Street
New York, N. Y. 10022

Answer and Counterclaim

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Lankenau, Kovner, Bickford & Abrons

By

Salvatore Lankenau

A Member

Attorney for Defendants

Mussen, Conger & Kagan

30 Rockefeller Plaza

New York, N. Y. 10020

Tel. No.: [212] 489-8230

To: HOWARD ABRAHAMS, Esq.
1345 Avenue of the Americas
New York, N. Y. 10011

Dated: New York, N. Y.
February 8, 1974.

ANSWERS OF ADDITIONAL DEFENDANT PRENTICE-HALL, INC. TO
COUNTERCLAIM (Filed March 11, 1974)
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

19a

MEREDITH CORPORATION,
an Iowa corporation,

Plaintiff,

-against-

HARPER & ROW, PUBLISHERS, INC.:
PAUL HENRY MUSSEN; JOHN JANEWAY
CONGER; and JEROME KAGAN,

Defendants,

BRIAN SUTTON-SMITH, an individual,
and PRENTICE-HALL, INC., a Delaware
corporation

Additional Defendants
on Counterclaim.

FILED

MAR 14 1974

Civil Action No.

73 CIV 5446 JMC

ANSWERS OF ADDITIONAL DEFENDANT,
PRENTICE-HALL, INC., TO COUNTERCLAIM

Additional Defendant, Prentice-Hall, Inc., for its Answer
to the counterclaims in the above entitled action, by its
attorney states:

ANSWER TO FIRST COUNTERCLAIM

15. Additional Defendant, Prentice-Hall, Inc., is without
sufficient information to either admit or deny the allegations
of paragraph 15 of the first counterclaim and therefore denies
same and demands strict proof thereof.

16. Admitted, except that its principal place of business
is in Englewood Cliffs, New Jersey.

17. Admitted.

18. Additional Defendant, Prentice-Hall, Inc., is without
sufficient information to either admit or deny the allegations
of paragraph 18 of the first counterclaim and therefore denies
same and demands strict proof thereof.

Answers of Additional Defendant Prentice-Hall, Inc. to
Counterclaim

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19. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 19 of the first counterclaim and therefore denies same and demands strict proof thereof.

20. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 20 of the first counterclaim and therefore denies same and demands strict proof thereof.

21. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 21 of the first counterclaim and therefore denies same and demands strict proof thereof.

22. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 22 of the first counterclaim and therefore denies same and demands strict proof thereof.

23. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 23 of the first counterclaim and therefore denies same and demands strict proof thereof.

24. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 24 of the first counterclaim and therefore denies same and demands strict proof thereof.

25. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 25 of the first counterclaim and therefore denies same and demands strict proof thereof.

**Answers of Additional Defendant Prentice-Hall, Inc. to
Counterclaim**

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26. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 26 of the first counterclaim and therefore denies same and demands strict proof thereof.

27. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 27 of the first counterclaim and therefore denies same and demands strict proof thereof.

28. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 28 of the first counterclaim and therefore denies same and demands strict proof thereof.

29. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 29 of the first counterclaim and therefore denies same and demands strict proof thereof.

30. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 30 of the first counterclaim and therefore denies same and demands strict proof thereof.

31. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 31 of the first counterclaim and therefore denies same and demands strict proof thereof.

32. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 32 of the first counterclaim and therefore denies

**Answers of Additional Defendant Prentice-Hall, Inc. to
Counterclaim**

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same and demands strict proof thereof.

33. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 33 of the first counterclaim and therefore denies same and demands strict proof thereof.

34. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 34 of the first counterclaim and therefore denies same and demands strict proof thereof.

35. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 35 of the first counterclaim and therefore denies same and demands strict proof thereof.

36. Denied.

37. Subject to correction, the allegation of action by the defendants is admitted.

38. Denied, except that it is admitted that Plaintiff's Book was prepared with the assistance of the Managed Textbook Division of plaintiff.

39. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 39 of the first counterclaim and therefore denies same and demands strict proof thereof, except it is admitted that plaintiff's book is being distributed by Additional Defendant, Prentice-Hall, Inc.

40. Additional Defendant, Prentice-Hall, Inc., is without

Answers of Additional Defendant Prentice-Hall, Inc. to
Counterclaim

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sufficient information to either admit or deny the allegation of sales "in excess of 50,000 copies of Child Psychology" in paragraph 40 of the first counterclaim and therefore denies the same and demands strict proof thereof, and denies the remainder of the allegations in paragraph 40 of the first counterclaim.

41. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 41 of the first counterclaim and therefore denies same and demands strict proof thereof.

42. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 42 of the first counterclaim and therefore denies same and demands strict proof thereof.

43. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 43 of the first counterclaim and therefore denies same and demands strict proof thereof.

44. Additional Defendant, Prentice-Hall, Inc., is without sufficient information to either admit or deny the allegations of paragraph 44 of the first counterclaim and therefore denies same and demands strict proof thereof.

ANSWER TO SECOND COUNTERCLAIM

45. Additional Defendant, Prentice-Hall, Inc., repeats and realleges, as if fully set forth herein, its answers to paragraphs 15-44 of this counterclaim.

46. Denied.

WHEREFORE, Additional Defendant, Prentice-Hall, Inc.,

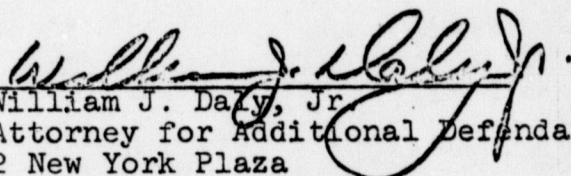
Answers of Additional Defendant Prentice-Hall, Inc. to
Counterclaim

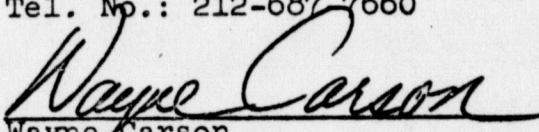
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demands that defendant's counterclaims be dismissed, with an
award of court costs and attorney's fees to Prentice-Hall,
Inc.

Prentice-Hall, Inc.

by


William J. Daly, Jr.
Attorney for Additional Defendant
2 New York Plaza
New York, N.Y. 10004
Tel. No.: 212-687-7660


Wayne Carson
Co-Counsel
2 New York Plaza
New York, N.Y. 10004
Tel. No.: 212-687-7660

To: Edward A. Miller, Esq.
10 E. 53rd Street
New York, N.Y. 10022

Lankenau, Kovner, Bickford & Abrons
30 Rockefeller Plaza
New York, N.Y. 10020

Howard Abrahams, Esq.
1345 Avenue of the Americas
New York, N.Y. 10011

Dated: New York, N.Y.
March 1, 1974

REPLY OF PLAINTIFF TO COUNTERCLAIM (Filed February 25, 1974) 25a
IN THE UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MEREDITH CORPORATION,
an Iowa corporation,

Plaintiff,

-against-

HARPER & ROW, PUBLISHERS, INC.;
PAUL HENRY MUSSEN; JOHN JANEWAY
CONGER; and JEROME KAGAN,

Defendants,

BRIAN SUTTON-SMITH, an individual,
and PRENTICE-HALL, INC., a Delaware
corporation,

Additional Defendants
on Counterclaim.

Civil Action No.

73 CIV 5446 JMC

REPLY OF PLAINTIFF, MEREDITH
CORPORATION, TO COUNTERCLAIM

Plaintiff, MEREDITH CORPORATION, for its reply to the
counterclaims in the above-entitled action, by its attorneys, states:

REPLY TO FIRST COUNTERCLAIM

15. Admitted, except that the residence of the additional
defendant is admitted on information and belief.

16. Upon information and belief, admitted.

17. Admitted.

18. Plaintiff, MEREDITH CORPORATION, is without sufficient
information to either admit or deny the allegations of paragraph 18 of
the first counterclaim and therefore denies same and demands strict
proof thereof.

19. Plaintiff, MEREDITH CORPORATION, is without sufficient

Reply of Plaintiff to Counterclaim

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information to either admit or deny the allegations of paragraph 19 of the first counterclaim and therefore denies same and demands strict proof thereof.

20. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 20 of the first counterclaim and therefore denies same and demands strict proof thereof.

21. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 21 of the first counterclaim and therefore denies same and demands strict proof thereof.

22. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 22 of the first counterclaim and therefore denies same and demands strict proof thereof.

23. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 23 of the first counterclaim and therefore denies same and demands strict proof thereof.

24. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 24 of the first counterclaim and therefore denies same and demands strict

Reply of Plaintiff to Counterclaim

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25. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 25 of the first counterclaim and therefore denies same and demands strict proof thereof.

26. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 26 of the first counterclaim and therefore denies same and demands strict proof thereof.

27. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 27 of the first counterclaim and therefore denies same and demands strict proof thereof.

28. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 28 of the first counterclaim and therefore denies same and demands strict proof thereof.

29. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 29 of the first counterclaim and therefore denies same and demands strict proof thereof.

30. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 30 of the first counterclaim and therefore denies same and demands strict

Reply of Plaintiff to Counterclaim

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31. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 31 of the first counterclaim and therefore denies same and demands strict proof thereof.

32. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 32 of the first counterclaim and therefore denies same and demands strict proof thereof.

33. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 33 of the first counterclaim and therefore denies same and demands strict proof thereof.

34. The first sentence of paragraph 34 is admitted. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the remaining allegations of paragraph 34 of the first counterclaim and therefore denies same and demands strict proof thereof.

35. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 35 of the first counterclaim and therefore denies same and demands strict proof thereof.

36. Denied.

37. Subject to correction, the allegation of action by the

38. Denied, except that it is admitted that "Plaintiff's Book" was prepared with the assistance of the Managed Textbook Division of plaintiff.

39. As strictly limited, the allegations are admitted, except that the notice of infringement was limited to that set forth in a letter from defendant HARPER & ROW to plaintiff dated September 25, 1973. The allegation of notice is otherwise denied.

40. Admitted that plaintiff sold in excess of 50,000 copies of Child Psychology, but the remaining allegations of paragraph 40 are denied.

41. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 41 of the first counterclaim and therefore denies same and demands strict proof thereof.

42. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 42 of the first counterclaim and therefore denies same and demands strict proof thereof.

43. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 43 of the first counterclaim and therefore denies same and demands strict proof thereof.

44. Plaintiff, MEREDITH CORPORATION, is without sufficient information to either admit or deny the allegations of paragraph 44 of

Reply of Plaintiff to Counterclaim

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the first counterclaim and therefore denies same and demands strict proof thereof.

REPLY TO SECOND COUNTERCLAIM

45. Plaintiff, MEREDITH CORPORATION, repeats and re-alleges, as if fully set forth herein, its answers to paragraphs 15-44 of this counterclaim.

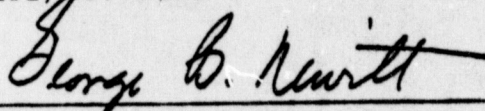
46. Denied.

WHEREFORE, plaintiff, MEREDITH CORPORATION, demands:

1. the relief requested in the Complaint; and
2. that defendants' counterclaims be dismissed, with an award of costs to plaintiff.

MEREDITH CORPORATION

By _____
Howard Abrahams
Meredith Corporation
1345 Avenue of the Americas
New York, New York 10019
(212) 757-1400



George B. Newitt
Co-counsel

OF COUNSEL:

George B. Newitt
George P. McAndrews
Timothy J. Malloy
Molinare, Allegretti, Newitt & Witcoff
135 South LaSalle Street
Chicago, Illinois 60603
(312) 372-2160

Reply of Plaintiff to Counterclaim
PROOF OF SERVICE

31a

Copies of REPLY OF PLAINTIFF, MEREDITH CORPORATION,
TO COUNTERCLAIM were mailed, first class, postage prepaid, to
the following counsel for defendants and additional defendant Prentice-
Hall, Inc. this 20th day of February, 1974:

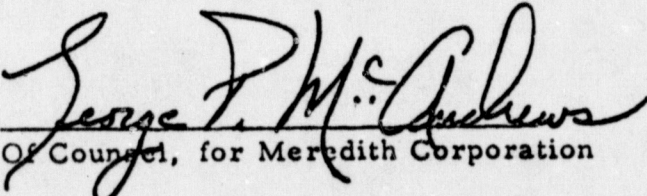
Edward A. Miller
General Counsel
Harper & Row, Publishers, Inc.
10 East 53rd Street
New York, New York 10022

John C. Lankenau
Lankenau, Kovner, Bickford & Abrons
30 Rockefeller Plaza
New York, New York 10020
(Counsel for Mussen, Conger and Kagan)

William J. Daly, Jr.
General Counsel
Prentice-Hall, Inc.
2 New York Plaza
New York, New York 10004

A copy of the aforesaid REPLY was also mailed, first class,
postage prepaid, on this 20th day of February, 1974, to:

Brian Sutton-Smith
62 Beechwood Terrace
Yonkers, New York


Of Counsel, for Meredith Corporation

REPLY AND COUNTERCLAIM OF BRIAN SUTTON-SMITH

32a

UNITED STATES DISTRICT COURT (Filed March 28, 1974)
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

MEREDITH CORPORATION,
an Iowa corporation,

Civil Action No.

Plaintiff,

73 Civ. 5446 (RO)

- against -

HARPER & ROW, PUBLISHERS, INC.;
PAUL HENRY MUSSEN; JOHN JANEWAY
CONGER; and JEROME KAGAN,

REPLY AND
COUNTERCLAIM

Defendants,

BRIAN SUTTON-SMITH, an individual,
and PRENTICE-HALL, INC., a Delaware
corporation,

Additional Defendants
on Counterclaim.

- - - - -X

Additional defendant on counterclaim Brian Sutton-Smith,
by his attorneys Hahn, Hessen, Margolis & Ryan, for his reply to the
counterclaims of defendants, alleges:

1. Denies knowledge or information sufficient to form a
belief as to any allegation of paragraphs 16, 18, 19, 20, 21, 22,
23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35 and 44 of the answer
and counterclaim.

2. Denies knowledge or information sufficient to form a
belief as to any allegation of paragraph 34 of the answer and counter-
claim except admits that defendants' Book is a college textbook
primarily intended for use in introductory courses in child psychology.

3. Denies each and every allegation of paragraphs 36 and
46 of the answer and counterclaim.

4. Denies each and every allegation of paragraph 38 of

the answer and counterclaim except admits that plaintiff's Book was prepared with the assistance of the Managed Textbook Division of plaintiff.

5. Denies each and every allegation of paragraph 39 of the answer and counterclaim except admits that prior to the commencement of this action, defendant Harper & Row, Publishers, Inc. notified plaintiff of the alleged infringement alleged in the complaint.

6. Denies each and every allegation of paragraph 40 of the answer and counterclaim except admits that prior to the initial discontinuance of distribution, plaintiff sold in excess of 50,000 copies of Child Psychology.

7. Denies knowledge or information sufficient to form a belief as to any allegation of paragraphs 41, 42 and 43 of the answer and counterclaim except alleges that plaintiff's Book and defendants' Book were in competition and plaintiff and the additional defendants were aware that as a consequence, plaintiff's Book might have a competitive affect on sales of defendants' Book and related books thereto.

AS AND FOR AN AFFIRMATIVE DEFENSE
TO THE SECOND COUNTERCLAIM

8. The second counterclaim does not allege a claim upon which relief can be granted.

AS AND FOR A COUNTERCLAIM
AGAINST DEFENDANTS

9. Additional defendant Brian Sutton-Smith is a citizen of the State of New York.

10. Upon information and belief, defendant Harper & Row, Publishers, Inc. is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 10 East 53rd Street, New York, New York.

11. Upon information and belief, defendant Paul Henry Mussen is a citizen of the State of California.

12. Upon information and belief, defendant John Janeway Conger is a citizen of the State of Colorado.

13. Upon information and belief, defendant Jerome Kagan is a citizen of the State of Massachusetts.

14. This counterclaim arises out of the transactions or occurrences that are the subject matter of the defendants' counterclaims.

15. This Court has jurisdiction over this counterclaim by virtue of Rule 13(a) of the Federal Rules of Civil Procedure.

16. On or about September 25, 1973, the defendants notified plaintiff that the book Child Psychology (written by additional defendant Brian Sutton-Smith) and then published by plaintiff was an infringement of defendants' book Child Development and Personality.

17. Defendants and their agents have orally and in writing stated to a number of persons both in the publishing industry and engaged in the teaching and application of child psychology that the book Child Psychology is an infringement of the copyright on defendants' book Child Development and Personality.

18. The statements made by defendants alleged in paragraphs 16 and 17 hereof were false and known by defendants to be false at the time they were made in that the book Child Psychology was not an

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Reply and Counterclaim of Brian Sutton-Smith
infringement of the book Child Development and Personality under
well settled principles of copyright law.

19. At or about the time that the statements alleged in paragraphs 16 and 17 were made, plaintiff was negotiating with additional defendant Prentice-Hall, Inc. to sell and assign to KA Prentice-Hall, Inc. the assets of its Appleton-Century-Crofts division including the right to publish Child Psychology.

20. Defendants, especially defendant Harper & Row, Publishers, Inc., knew or should have known of the negotiations described in paragraph 19 hereof.

21. Defendants made the statements alleged in paragraphs 16 and 17 in order to obstruct or prevent the sale or assignment of the right to publish Child Psychology from plaintiff to additional defendant Prentice-Hall, Inc. and to wrongfully discourage sales of Child Psychology by threatening teachers adopting such Book for their course requirements with involvement in litigation or the danger that the Book would be withdrawn from sale either as a result of litigation or by the voluntary abandonment of such Book by plaintiff.

22. As a result of the foregoing, on October 31, 1973, when additional defendant Prentice-Hall, Inc. acquired the other assets of plaintiff's Appleton-Century-Crofts division, the right to publish the book Child Psychology was not included.

23. As a consequence of the foregoing, from November 1, 1973 to January 18, 1974, plaintiff continued to sell the book Child Psychology. At that time, as a result of the transactions heretofore described between plaintiff and additional defendant Prentice-Hall, Inc., plaintiff's facilities for selling and promoting the Book were

severely limited. Adequate facilities for sale and promotion of the Book were not acquired until the right to publish the Book was acquired by Prentice-Hall, Inc. on January 18, 1974.

24. As a result of the foregoing, the sales of the book Child Psychology have been wrongfully curtailed and consequently, the royalties paid to additional defendant Brian Sutton-Smith have be wrongfully curtailed in an amount in excess of \$50,000.

WHEREFORE, additional defendant Brian Sutton-Smith demands judgment dismissing the counterclaims against him, together with the cost and disbursements of the action including a reasonable attorney's fee and on his counterclaim against the defendants herein for \$50,000 from September 25, 1973, together with the costs and disbursements of this action.

HAIN, HESSEN, MARGOLIS & RYAN

By 

A Member of the Firm
Attorneys for additional defendant
Brian Sutton-Smith
Office and P. O. Address
350 Fifth Avenue
New York, New York 10001
Tel: (212) 736-1000

Reply and Counterclaim of Brian Sutton-Smith
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

37a

-----X
MEREDITH CORPORATION,
an Iowa corporation,

Plaintiff,

- against -

Civil Action No.

73 Civ. 5446 (RO)

AFFIDAVIT OF SERVICE

HARPER & ROW, PUBLISHERS, INC.;
PAUL HENRY MUSSEN; JOHN JANEWAY
CONGER; and JEROME KAGAN,

Defendants,

BRIAN SUTTON-SMITH, an individual,
and PRENTICE-HALL, INC., a Delaware
corporation,

Additional Defendants
on Counterclaim.

-----X
STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

Jeanne L. Repetti, being duly sworn, deposes and says,
that deponent is not a party to the action, is over 18 years of
age and resides at Queens, New York. That on March 27, 1974, de-
ponent served the within Reply and Counterclaim upon Edward A. Miller,
Esq., Harper & Row, Publishers, Inc., 10 East 53rd Street, New York,
New York, Attorney for defendant Harper & Row, Publishers, Inc.;
John C. Lankenau, Esq., Lankenau, Kovner, Bickford & Abrons, 30
Rockefeller Plaza, New York, New York, Attorneys for defendants Mussen,
Conger and Kagan; Howard Abrahams, Esq., Meredith Corporation, 1345
Avenue of the Americas, New York, New York, Attorney for plaintiff;
George B. Newitt, Esq., Molinare, Allegretti, Newitt & Witcoff, 135

Reply and Counterclaim of Brian Sutton-Smith

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South LaSalle Street, Chicago, Illinois, Co-counsel for plaintiff;
and William J. Daly, Jr., Esq., Prentice-Hall, Inc., 2 New York
Plaza, New York, New York, Attorney for additional defendant
Prentice-Hall, Inc., the addresses designated by said attorney or
party for that purpose by depositing a true copy of same enclosed
in a postpaid, properly addressed wrapper, in an official depository
under the exclusive care and custody of the United States Post Office
department within the State of New York.

Sworn to before me this

27th day of March, 1974.

Jeanne L. Repetti
Jeanne L. Repetti

Cecilia M. Bruno
Notary Public

CECILIA M. BRUNO
Notary Public, State of New York
No. 410667300
Qualified in Queens County
Commission Expires March 30, 1976

REPLY TO BRIAN SUTTON-SMITH COUNTERCLAIM
UNITED STATES DISTRICT COURT (Filed May 3, 1974)
SOUTHERN DISTRICT OF NEW YORK

39a

-----x

MEREDITH CORPORATION,

Plaintiff,

-against-

HARPER & ROW, PUBLISHERS, INC.;
PAUL HENRY MUSSEN, JOHN JANEWAY
CONGER, and JEROME KAGAN,

Defendants,

BRIAN SUTTON-SMITH, an individual
and PRENTICE-HALL, INC., a
Delaware Corporation,

Additional Defendants
on Counterclaim.

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REPLY TO SUTTON-
SMITH COUNTERCLAIM

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Defendants, for their Reply in the above-entitled action, by
their attorneys, replying to the Counterclaim of Additional Defendant
Brian Sutton-Smith:

1. Admit the allegations contained in paragraph 9 of the
Sutton-Smith Counterclaim.
2. Admit the allegations contained in paragraph 10 of the
Sutton-Smith Counterclaim.
3. Admit the allegations contained in paragraph 11 of the
Sutton-Smith Counterclaim.
4. Admit the allegations contained in paragraph 12 of the
Sutton-Smith Counterclaim.
5. Admit the allegations contained in paragraph 13 of the
Sutton-Smith Counterclaim.

Reply to Brian Sutton-Smith Counterclaim

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6. Deny each and every allegation contained in paragraph 14 of the Sutton-Smith Counterclaim.

7. Deny each and every allegation contained in paragraph 15 of the Sutton-Smith Counterclaim.

8. Admit the allegations contained in paragraph 16 of the Sutton-Smith Counterclaim, except deny that Child Psychology was written by Additional Defendant Brian Sutton-Smith.

9. Deny each and every allegation contained in paragraph 17 of the Sutton-Smith Counterclaim, except each Defendant admits that he has stated in substance to one or more persons that substantial portions of Child Psychology ("Plaintiff's Book") were similar to, and apparently copied from, Child Development and Personality ("Defendants' Book").

10. Deny each and every allegation contained in paragraph 18 of the Sutton-Smith Counterclaim.

11. Deny each and every allegation contained in paragraph 19 of the Sutton-Smith Counterclaim, except admit on information and belief Plaintiff negotiated with Additional Defendant Prentice-Hall, Inc. in the Fall of 1973 for the sale of the assets of the Appleton-Century-Crofts division, including the right to publish Child Psychology.

12. Deny each and every allegation contained in paragraph 20 of the Sutton-Smith Counterclaim, except Defendant Harper & Row admits that some time after beginning its investigation of similarities between Plaintiff's Book and Defendants' Book, Defendant Harper & Row learned of negotiations by Plaintiff for the sale of its Appleton-Century-Crofts division and that some time after the notification referred to in paragraph 16 of the Sutton-Smith Counterclaim, Defendant Harper & Row was informed of the involvement in such negotiations of Additional Defendant Prentice-Hall, Inc.

Reply to Brian Sutton-Smith Counterclaim

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13. Deny each and every allegation contained in paragraph 21 of the Sutton-Smith Counterclaim.

14. Deny each and every allegation contained in paragraph 22 of the Sutton-Smith Counterclaim, except admit on information and belief that when Additional Defendant Prentice-Hall, Inc. in the Fall of 1973 acquired the other assets of Plaintiff's Appleton-Century-Crofts division, it declined to acquire Child Psychology.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Sutton-Smith Counterclaim.

16. Deny each and every allegation contained in paragraph 24 of the Sutton-Smith Counterclaim.

FIRST DEFENSE

17. The Counterclaim fails to state a cause of action.

SECOND DEFENSE

18. The statements made by the Defendants concerning Plaintiff's Book are true.

THIRD DEFENSE

19. The Plaintiff Meredith, Inc., and the imprint Appleton-Century-Crofts, under which Plaintiff's Book was published, are well known among authors, scholars and members of the general public.

20. The material contained in Plaintiff's Book is a matter of public interest and public concern and the statements of the Defendants concerning Plaintiff's Book were made without malice, in good faith and in the belief that the same were true and with reasonable cause for such belief, and, as such, are protected under the First and Fourteenth Amendments of the Constitution of the United States.

Reply to Brian Sutton-Smith Counterclaim
FOURTH DEFENSE

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21. The Plaintiff's Book purports to be a learned treatise on child development and psychology and, as such, is subject to the doctrine of fair comment. The comments of the Defendants concerning Plaintiff's Book were uttered without malice and are within the doctrine of fair comment.

WHEREFORE Defendants demand judgment dismissing the Sutton-Smith Counterclaim, together with the costs and disbursements of the action, including a reasonable attorney's fee.

Edward A. Miller
Edward A. Miller
Attorney for Defendant
Harper & Row, Publishers, Inc.
10 E. 53rd Street
New York, N. Y. 10022
Tel. No.: [212] 593-7116

Lankenau, Kovner, Bickford & Abrons

By Robert L. Lankenau
A member
Attorney for Defendants
Mussen, Conger & Kagan
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New York, N. Y. 10020
Tel. No.: [212] 489-8230

TO: Howard Abrahams, Esq.
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Marshall Berger, Esq.
Hahn, Hessen, Margolis & Ryan
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Brian Sutton-Smith
350 Fifth Avenue
New York, N. Y. 10001

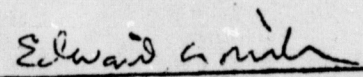
PROOF OF SERVICE

Copies of the aforesaid Notice to Take Deposition Upon Oral Examination of Additional Defendant Brian Sutton-Smith were mailed, first class, postage prepaid, to the following counsel for Plaintiff and Additional Defendants this 17th day of April, 1974:

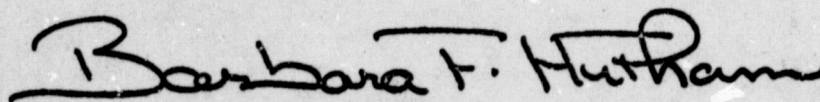
Howard Abrahams, Esq.
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Marshall Berger, Esq.
Hahn, Hessen, Margolis & Ryan
Attorney for Additional Defendant
Brian Sutton-Smith
350 Fifth Avenue
New York, N. Y. 10001


Edward A. Miller
General Counsel
Harper & Row, Publishers, Inc.

Subscribed and sworn to before me
this 17th day of April 1974.



BARBARA F. HUTHAM
NOTARY PUBLIC, State of New York
No. 81-1065640
Qualified in New York County
Cuth. filed in New York County
Commission Expires March 30, 1975

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MEREDITH CORPORATION,
an Iowa corporation,

Civil Action No.
73 Civ. 5446 (RO)

ORDER TO SHOW CAUSE

**Additional Defendants
on Counterclaim.**

(1) Pursuant to FRCP Rule 65 enjoining Plaintiff and Defendant Prentice-Hall, Inc., their agents and employees, pending the final determination of Counts 1 and 2 of the

Order to Show Cause

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complaint and the counterclaims of Defendants Harper & Row, Mussen, Conger & Kagan (hereafter referred to as the "Copyright Infringement Claims") from selling or distributing in any manner copies of the book entitled "Child Psychology";

(2) Pursuant to FRCP Rule 42(b) directing a separate trial on the Copyright Infringement Claims, and thereafter, if necessary, a trial on Counts 3 and 4 of the complaint and the counterclaim of Defendant Sutton-Smith (hereinafter referred to as the "Defamation Claims");

(3) Pursuant to FRCP Rule 26(c) staying all discovery proceedings relating to the Defamation Claims pending the determination of the Copyright Infringement Claims; and

(4) Pursuant to FRCP Rule 37 compelling Plaintiff and Additional Defendant Prentice-Hall, Inc. to submit complete answers to Defendants' interrogatories and complete responses to Defendants' request for the production of documents, and to pay the reasonable expenses, including attorneys' fees, incurred in making this motion; and

IT IS FURTHER ORDERED, that service of a copy of this order and of the papers upon which the same is granted, on the attorneys for Plaintiff and the Additional Defendants on or before May 14, 1974, ^{by 12 noon} shall be sufficient service of this order.

United States District Judge

**JOINT AFFIDAVIT OF EDWARD A. MILLER AND JOHN C. LANKENAU IN
SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

MEREDITH CORPORATION,
an Iowa corporation,

Plaintiff,

- against -

HARPER & ROW, PUBLISHERS, INC.:
PAUL HENRY MUSSEN: JOHN JANEWAY
CONGER and JEROME KAGAN,

Defendants.

BRIAN SUTTON-SMITH, an individual,
and PRENTICE-HALL, INC., a Delaware
corporation,

Additional Defendants
on Counterclaims

-----X

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

EDWARD A. MILLER and JOHN C. LANKENAU, being duly sworn,
depose and say:

1. Edward A. Miller is General Counsel of defendant Harper & Row, Inc. ("Harper & Row") and John C. Lankenau is a member of the firm of Lankenau Kovner Bickford Abrons & Beer, counsel for defendants Dr. Paul Henry Mussen, Dr. John Janeway Conger and Dr. Jerome Kagan (sometimes hereinafter referred to by their last names and collectively as "the Authors"). We submit this joint affidavit in support of the motion of our clients:

(a) for a preliminary injunction under FRCP 65;

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(b) for an order pursuant to FRCP 42(b) directing that separate trials be held, first on the copyright infringement claims and thereafter, if necessary, on the defamation claims;

(c) for a protective order under FRCP 26(c) staying all discovery on the defamation claims pending disposition of the copyright infringement claims;

(d) for an order under FRCP 37(a) requiring plaintiff Meredith and Additional Defendant Prentice-Hall to each answer fully to defendants' interrogatories and respond to defendants' requests for the production of documents, together with the reasonable expenses, including attorney's fees incurred in making this motion under FRCP 37(a) (4) in view of said parties totally unjustified and willful refusal to voluntarily answer and respond.

THE NATURE OF THIS ACTION
AND DESCRIPTION OF THE PARTIES

2. At the heart of this action is the question of whether a textbook entitled "Child Psychology" published by the Appleton-Century-Crafts division of Meredith Corporation ("Meredith") in 1973 infringes the standard text in the child development field, "Child Development and Personality", first published by Harper & Row in 1956 and now in its fourth edition. Thus, although this action was instituted by Meredith (for a declaratory judgement that its book does not infringe "Child Development and Personality"), Meredith filed suit only after

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Harper & Row and the individual Authors made it clear that further sale of the Meredith book would result in litigation; in fact, it was only Meredith's successful run to the courthouse, apparently perceiving some tactical advantage, which resulted in its being the plaintiff here, for it is really the defendants' affirmative claims against Meredith and the parties named as Additional Defendants which form the basis of this litigation.

3. Because of the way in which this action began, a description of each party and the role of each in this sorry episode may be helpful.

(a) The "Defendants"

(i) Harper & Row, founded in 1817 and the second oldest publishing company in the United States, remains one of this country's leading and most prestigious publishers. It published the first edition of "Child Development and Personality" in 1956, authored by Drs. Mussen and Conger. The second edition, prepared with the additional assistance of Dr. Kagan, was published in 1963. The third edition, prepared by all three men, was published in 1969. Due to the quality of the preparation and scholarship of the work, it has become a widely-known, standard text used in colleges and universities throughout the United States. By far the leading work in its field, it has enjoyed sales in excess of 700,000 copies since 1956.

(ii) The Authors. Each of the three Authors are among the most admired respected scholars in his field.

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Dr. Paul Henry Mussen has been Professor of Psychology at the University of California at Berkeley since 1961. He is also Research Psychologist and, since 1971, Director of the Institute of Human Development there. Dr. Mussen received his undergraduate and masters degrees from Stanford University and his Doctorate from Yale University. A Fulbright Scholar in 1960-61, Dr. Mussen has taught at Harvard University, Ohio State University and the University of Wisconsin. He has been a consulting editor of such journals as "Child Development", and the "Journal of Child Psychology and Psychiatry", among others. Since 1968, Dr. Mussen has been the Editor of the Annual Review of Psychology. He is a Fellow of the American Psychological Association, a member of various other professional organizations and is currently President of the Western Psychological Association. Dr. Mussen is the author of thirteen books (including Mussen, Conger & Kagan) and more than sixty-four articles, reviews and other materials.

Dr. John Janeway Conger received his undergraduate education at Amherst College and his masters and doctorate degrees from Yale University. Since his discharge from the Navy in 1946 (as the Commanding Officer of a Destroyer Escort), Dr. Conger has taught at the Graduate School of Indiana University, was Director of Psychological Research of the Department of Psychiatry at the Indiana University School of Medicine and was Chief Psychologist at the United States Naval Academy. In addition, he has been Professor and Head of the Division of Clinical Psychology of the Department of Psychiatry of the University of Colorado School of Medicine and later Vice-President for Medical Affairs and Dean of that school. A member of many professional Associations, committees and editorial boards, Dr. Conger is the author of a wide variety of books, articles and other materials.

Dr. Jerome Kagan has been Professor of Human Development at Harvard University since 1964. He received his undergraduate education at Rutgers University, his doctorate from Yale University and, in 1964, received an honorary Masters degree from Harvard University. Dr. Kagan has been a clinical or research psychologist at Ohio State University and the United States Army Hospital at West Point. Prior to his appointment at Harvard, he was Chairman of the Department of Psychology at Fels Research Institute. Also a member of a variety of professional organizations and committees, Dr. Kagan is an editorial consultant to such journals as "Child Development" and "The Journal of Experimental Child Psychology", among others. He is the author of four books and numerous other articles and materials.

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(b) The plaintiff and the Additional Defendants.

(i) Meredith Corporation was, until 1973, the owner of Appleton-Century Crofts ("ACC"), which was operated as an unincorporated division. According to Meredith's pleadings, ACC operated a "managed textbook" division. Evidence adduced in this case establishes that the "managed textbook" division identified the leading college textbook in various fields (and identified Drs. Mussen, Conger and Kagan's book in the child development and psychology field) and, having done so, then produced a closely similar book to compete with that leading text. Pursuant to that policy, ACC produced "Child Psychology" in 1973. Also in 1973, Meredith sold ACC to Prentice-Hall, Inc.

(ii) Brian Sutton-Smith was the purported author of the Meredith book. In fact, however, Mr. Sutton-Smith, during his deposition in this case, readily admitted that indeed he was not the author of that book but, rather, described himself as its editor or consultant, despite the fact that the volume itself represents him to be the sole author.

(iii) Prentice-Hall, Inc. was named an Additional Defendant because in mid-January, 1974, it acquired the rights to the Meredith Book and, since that time, has been actively engaged in its sale.

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4. Harper & Row and the Authors fully complied with the copyright law and received from the Register of Copyrights registration for each of the above editions of "Child Development and Psychology".

THE HISTORY OF THIS LITIGATION

5. In or about March 1973, Meredith published its book entitled "Child Psychology" under the purported authorship of Brian Sutton-Smith (hereinafter called the "Meredith Book").

6. After a careful study of the Meredith Book, Harper & Row furnished a detailed compilation of approximately 400 passages in the Meredith Book which almost identically reproduced corresponding passages from "Child Development and Personality" (hereinafter "Mussen, Conger & Kagan")** and, indeed, that there was additional evidence of direct copying. In response, Meredith initially halted publication pending settlement, but thereafter, in late December 1973, Meredith instituted this action for a declaratory judgment of invalidity of the copyright and defamation alleging that defendants stated that the Meredith Book copied Mussen, Conger & Kagan. Sales of the Meredith Book resumed and still continue.

* During his deposition Mr. Sutton-Smith not only admitted that he did not write the Meredith Book but also testified that he did not even know at the time it was published whether or not it was an original work.

** A compilation containing these approximately 400 passages is submitted herewith as Exhibit A.

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7. Harper & Row and the Authors of course counter-claimed for copyright infringement and punitive damages based on both the obvious ~~deliberate and wholesale copying of Mussen,~~ Conger & Kagan and the conscious practice of Meredith's "managed textbook" operation of appropriating the college texts of other authors by preparing ghost-written imitations to the grave detriment of the academic and publishing communities and honest scholarship.

8. In early February, Harper & Row and the Authors sought to join Brian Sutton-Smith and Prentice-Hall, who had by then acquired the Meredith Book and had resumed its sale, asserting claims similar to those assertions against Meredith. Sutton-Smith who was outside the country was served in mid-March.

9. Sutton-Smith's reply asserted a counterclaim against Harper & Row and the Authors for defamation, asserting that they had falsely stated that the Meredith Book infringed Mussen, Conger & Kagan. Prentice-Hall asserted no counterclaim.

10. At a pre-trial hearing before this Court, Harper & Row and the Authors stated their intention to move for a preliminary injunction restraining sale of the Meredith Book. Instead, Judge Owen suggested an early trial date, June 10, 1974 - a suggestion in which Harper & Row and the Authors heartily concurred and which they still wish to have accomplished.

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11. Meredith, however, has now advised that solely in connection with the libel claims made by it, it wishes to take depositions all over the United States of Harper & Row salesman (known as "College Travelers"), book store operators and the heads of Child Psychology Departments of various institutions as well as at least several persons to whom the Authors stated that the Meredith Book contained many similarities to Mussen, Conger & Kagan. The maneuver is an obvious tactic to delay coming to grips with the copyright issues by suggesting fantastic amounts of discovery, costly to all sides, on an issue that need never be met if Harper & Row and the Authors prevail on the copyright issues.

SUMMARY OF EVIDENCE

12. To understand the strength of our case, we think it is important for the Court to have some of the basic facts that we have discovered in our investigation concerning the copyright issues. We have already supplied the Court with a copy of the compilation of approximately 400 passages from Meredith's Book, which we believe were copied or abstracted from Mussen, Conger & Kagan (see Exhibit A submitted herewith). These similarities, we think, speak for themselves and in and of themselves would provide a basis for a finding of copyright infringement. The case, however, does not stop there. Indeed, it is just the beginning.

13. In addition, to the truly overwhelming objective evidence of plagiarism taken from a comparison of the two books.

themselves, the very genesis of the Meredith Book as a "managed textbook" provides further evidence of the illegal appropriation of Mussen, Conger & Kagan. For example, the first step in the preparation of a "managed textbook" was market research on the texts available in a given field so that the best-selling text could be adopted as a model for a Meredith product. In this case, the market research report said:

"Mussen leads in adoptions, and in number of users, and is therefore the model book...Mussen, the leading book, serves as the content model, in terms of topics to be included, weighting of the topics, and in sequence of the topics."*

14. The significance of the model book and the deliberate intent to copy is demonstrated by a variety of documents: Thus, in April 1972, one of Meredith's managing editors wrote the person hired to prepare a workbook for use in connection with the Meredith Book and forwarded the manuscript for Chapters 2 and 3 and an outline of the entire text of the Meredith Book. Significantly, the letter also enclosed "a copy of Mussen, Conger and Kagan : Child Development and Personality. This book will give you a better idea of what goes into succeeding chapters until you receive our manuscript."**

15. After securing free lancers to "write" these

* See page 2 of Exhibit B, the market research report in question.

**See letter dated April 18, 1972, attached as Exhibit C hereto.

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books, ACC's editors prepared detailed chapter outlines, which, in at least five cases, were nothing more than the first drafts of outlines of Mussen, Conger & Kagan. Large portions of these initial outlines found their way into the final outlines supplied to each writer. These final outlines make clear that, together with other source material, each of the writers was also given relevant portions of Mussen, Conger & Kagan and, on numerous occasions, was specifically referred to Mussen, Conger & Kagan. Indeed, one finds frequently throughout those outlines: "See Mussen."*

16. Indeed, the writing could hardly have been done on any basis. The persons hired to do this project were professional writers - but certainly not professionals in the field of psychology, let alone child psychology. They were hired through advertisements in the New York Times, and one writer, who prepared approximately six chapters of the Meredith Book and re-wrote others, worked in the Advertising Department of the Exxon Corporation as a speech writer and, although a college graduate, had never even taken a course in psychology. Clearly, there is simply no way a non-professional in the field of child psychology could "write" such a book without almost total reliance on secondary sources, particularly the model adopted by ACC. And, just as clearly, it would be impossible for such a non-professional to produce a work of original scholarship on a moonlight basis in a matter of weeks. Indeed, the first

*Submitted herewith as Exhibit D is an example of an initial outline marked in yellow to facilitate review by the Court.

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drafts of the manuscripts produced by these "writers" show, on their face, extensive taking from Mussen, Conger & Kagan. The compilation, submitted as Exhibit A hereto, is conclusive proof that this occurred.

17. There is, indeed, even evidence of conscious concealment. Thus, in a memorandum addressed to ACC's development editor dealing with the first draft of Chapter 10 of the Meredith Book, attention was directed to a description of "eidetic imagery" and a comment to the effect that there was a greater incidence of this phenomenon among the Ibo tribe than among others. The memorandum noted that this discussion was taken from Mussen, Conger & Kagan - as indeed it was - and asked "Can we find another group besides Ibo as this is a dead give-away?"*

18. Meredith's next step in preparing a "managed text" was to review the manuscript to insure that a book in the likeness of the model was, in fact, produced. The reviewer was instructed to "call attention to major omissions based on the model and the marketing objectives..." and to "evaluate the organization noting significant departures from the model, whether advantageous or not..." Moreover, the reviewer was also instructed to "resist the temptation to impose your own view of the subject matter. The model and the marketing report are the arbiters, combined with your own common sense."**

*See memorandum, attached as Exhibit E.

**Exhibit F, attached hereto.

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19. The final ingredient in assembling a "managed textbook" was securing someone to be the "author" of the book - in this case, Brian Sutton-Smith. While, indeed, Mr. Sutton-Smith is listed as the author, neither Meredith nor Mr. Sutton-Smith have made any attempt to dispute the fact that the book was not written by him. Indeed, the documents show that when Meredith approached Sutton-Smith, they advised him that "the project we are proposing would not be very demanding in terms of your time and energy." And, in a subsequent letter explaining their "new publishing procedures", Meredith described the "author's" role as actually being closer in nature to that of a consulting editor. In fact, Meredith stated to Mr. Sutton-Smith:

"The entire project would require only a few hours a week for you to consult with us over a span of four to six months. A good part of the consultation work will be accomplished over the phone or through the mail. The total development time--from the day you sign the contract until the day you receive your complimentary copies--would be about twelve months. We would fit our project around your schedule and would not conflict with your teaching, administrative or research commitments. And in one year's time you would be known as the sole author of the leading child psychology text on the market."*

20. Indicative of the meager contribution of Mr.

Sutton-Smith to the Meredith Book, is the fact that the contract entered into between Mr. Sutton-Smith and Meredith provided for royalties of only 3% of net price to Mr. Sutton-Smith. This compares with royalties traditionally paid to the authors of college textbooks of about 15% and, in some cases more: Drs. Mussen

*See letter dated October 26, 1971, attached hereto as Exhibit G.

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Conger and Kagan received a royalty of 18% in recognition of their standing and the quality of their work.

21. The enormous extent of the copying and paragraphing is, we submit, more than evident from the 400 passages which we have provided to the Court in Exhibit A, as well as the facts set forth in this affidavit concerning Meredith's "managed textbook" division and the product of its imitation of Mussen, Conger & Kagan. The Court should not overlook the extent of this activity, the morality and ethics of which can be clearly deduced from the contents of a memorandum which Robert Loweth, a key ACC executive, wrote in 1971 to T. W. Adams, who was, we understand the second in command at ACC. In this memorandum, entitled "Recommendations for 1973 titles for Product Creation Department", attached hereto as Exhibit II, Mr. Loweth listed ten books, each of which was an outstanding text in its field, not one of which however, had been published by Meredith. Of course, Mussen, Conger & Kagan is on that list.

22. Against this mass of evidence clearly implicating Meredith, Sutton-Smith and Prentice-Hall in a disreputable and sterile scheme to plagiarize the works of authentic scholars, they have had the effrontery to respond with claims of libel. To be sure, the Authors have stated to their colleagues that the Meredith Book copied Mussen, Conger & Kagan. They have said so because that is what they believe to be the truth and they intensely desire a trial to prove it beyond doubt. However, the delaying tactics of Meredith and Prentice-Hall now jeopardize the early trial date set by this Court, June 10, 1974, and which the Authors and Harper & Row feel is imperative.

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HARPER & ROW AND THE AUTHORS ARE
ENTITLED TO PRELIMINARY INJUNCTIVE
RELIEF NOW, AS A MATTER OF LAW

23. It is respectfully submitted that Harper & Row and the Authors have so clearly discharged their burden of showing copyright infringement that this Court should exercise its discretionary power to issue a preliminary injunction restraining the further violation of the copyrights in question. Clearly, a prima facie case of infringement has been made which is sufficient to entitle Harper & Row and the Authors to the relief requested.

"When a prima facie case for copyright infringement has been made,... (the moving parties) are entitled to a preliminary injunction without a detailed showing of danger of irreparable harm [citing cases]": Rushton v. Vitale, 218 F.2d 434, 436 (2d Cir. 1955).

MEREDITH'S AND PRENTICE-HALL'S
WILLFUL FAILURE TO ANSWER
INTERROGATORIES

24. Obviously recognizing the strength of the proof of conscious infringement against them, Meredith and Prentice-Hall have failed to answer short and direct sets of interrogatories, thereby threatening to frustrate the defendants' hope of a trial on June 10th. Specifically, defendants Harper & Row and the Authors served interrogatories and requests for the production of documents on Meredith and Prentice-Hall, answers to which were due on May 8, 1974. Prentice-Hall, has totally failed to answer either the interrogatories or the requests for the production of documents and Meredith has, in effect, done the same thing by

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serving a response utterly devoid of the information requested.

A copy of Meredith's purported response, reciting the questions asked, is annexed hereto as Exhibit I .*

25. Although Harper & Row and the Authors sought information peculiarly within the knowledge of Meredith and Prentice-Hall, Prentice-Hall has made no answer and Meredith postures that it cannot answer because the records of ACC are no longer in its possession. Of course Meredith has had or could easily gain full access to these records; many persons connected with ACC are still employed by Meredith. Meredith obviously is in a position to provide this information, if not alone, then certainly in cooperation with Prentice-Hall. They should be ordered by this Court to do so.

* The interrogatories, as is evident on their face, seek only information about the most relevant issues in this case, to wit: the direct and indirect costs of the sales of the infringing book and related records (§§ 1 and 2); the cost records relating to the infringing book (§§ 3, 4 and 5); the profit or loss resulting from publication of the infringing book (§§ 6 and 7); the identity of each freelance writer who wrote or revised the book and when each such writer received chapter outlines, what source material was supplied, when each furnished first drafts and the amount paid each by Meredith for such services (§§ 8 and 9); the identity of others who assisted in the preparation of the infringing book, including the hours worked, the amount paid and materials assembled by each (§§ 10 and 11); costs incurred by Meredith prior to publication (§§ 12 and 13); advances, royalties and other payments to Brian Sutton-Smith (§§ 14 and 15); the universities, colleges and schools which adopted the infringing book and the period of such adoption (§§ 16, 17 and 18); the circumstances surrounding the sale by Meredith of certain assets of ACC to Prentice-Hall in the fall of 1973; Prentice-Hall's decision not to acquire the infringing book at that time and its later purchase of the infringing book in 1974 (§§ 19, 20 and 21); and, documents relating to the establishment of the Managed Textbook Division and to the operation thereof (§ 27).

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A Separate Trial on the Copyright
Infringement Claims with a Stay of
Discovery on the Defamation Claims,
Will Save Enormous Expense and Time
for the Parties, the Witnesses and
this Court.

26. In addition to the delay threatened by their unwarranted failure to answer Harper & Row's interrogatories and requests for document production, further and protracted delay is inevitable if Meredith, Sutton-Smith and Prentice-Hall are permitted to proceed with their plan to depose dozens of Harper & Row's college travelers, psychology department heads, professors, bookstore managers and purchasing agents across the country. In fact, this very morning the attorneys for Meredith announced that they intend to depose, in addition, persons who spoke with Dr. Mussen who reside in California and in various other parts of the country. They also announced that, in view of these depositions, the trial on June 10 would have to be postponed. This discovery, of course, is entirely on the defamation issues which will utterly fail if Harper & Row and the Authors succeed, as they surely will, in proving that the Meredith book was, indeed, plagiarized from Mussen, Conger & Kagan. It is axiomatic that no cause of action can exist for trade libel or disparagement in the absence of proof that the disparaging statement was false. See, e.g., OA Business Publications, Inc. v. Davidson Publishing Co., 334 F.2d 432 (7th Cir. 1964); see, also, Prosser, Torts (3d ed. 1964) at p. 943.

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27. A further reason for the severance of the defamation claims is the fact that the next three months constitute the most vital months for sales of college textbooks since most university departments order their textbooks for the fall semesters during this period. To force the Harper & Row college travelers to attend depositions during this season is obviously part of the Meredith effort to harass Harper & Row and delay the trial of the copyright infringement claims. Furthermore, it is exceedingly burdensome and, in all likelihood, unnecessary for Meredith to be permitted to subpoena Harper & Row customers during this season, especially since Harper & Row and the Authors have overwhelmingly demonstrated the high probability of success upon the copyright infringement claims.

28. Since 1966, when considerations of "expedition and economy" were added by amendment to FRCP Rule 42(b), courts have severed issues for trial where, as here, most of the witnesses could testify upon an issue such as damages, and would not be called if no liability was found. Bvocic v. Firestone Tire and Rubber Co., 227 F.Supp. 210 (E.D. Wisc. 1967). Significantly, courts have frequently severed issues of validity of patents or copyrights. leaving for a subsequent trial issues of misuse or damages. Society of European Stage Authors and Composers v. WCAU Broadcasting Co., 35 F.Supp. 460 (E.D. Penn. 1940); Woburn Degreasing Co. of New Jersey v. Kellogs, 37 F.Supp. 311 (W.D. N.Y. 1941).

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29. Given the substantial public interest in the infringement questions, there is, moreover, great likelihood that the defamation claims could not survive a motion for summary judgment, even if the statements were proven to be inaccurate, given the applicability of the "actual malice" rule of New York Times v. Sullivan, 376 US 254 (1964); Rosenbloom v. Metromedia, Inc., 403 US 29 (1971). Thus, the plaintiffs in the defamation claims would have the burden of establishing with "convincing clarity", not only the falsity of the statements, but the fact that they were made either with knowledge of falsity or reckless disregard as to their truth.

30. Since the defamation claims are so tenuous and depend entirely upon overcoming the tremendous accumulation of persuasive evidence of infringement, it is submitted that Meredith, Sutton-Smith and Prentice-Hall should not be permitted further discovery on the defamation claims since the probable determination of the copyright infringement claims will eliminate the need for further proceedings. To permit them to continue such discovery directed to a joint trial of the defamation claims and the infringement claim, will, therefore, surely and certainly

(a) require a lengthy postponement of the trial date set by this Court,

(b) involve obtaining information which may not - and, we submit, will not - even be relevant in this case,

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(c) require enormous time and expense to all concerned, perhaps needlessly -- a consideration of great importance to Harper & Row since this is the height of the selling season for college texts, and

(d) cause severe disruption and inconvenience to Harper & Row's business since it will be necessary to depose professors, bookstore managers and others who purchase its books and whose goodwill is of extreme importance to Harper & Row. We think that these appalling consequences should not be occasioned by such a flimsy, transparent claim.

WHEREFORE, your deponents respectfully request that this Court issue an order providing as follows:

(1) Pursuant to FRCP Rule 65 enjoining plaintiff and defendant Prentice-Hall, Inc., their agents and employees pending the final determination of Counts 1 and 2 of the complaint and the counterclaims of defendants Harper & Row, Mussen, Conger & Kagan from selling or distributing in any manner copies of the book entitled "Child Psychology";

(2) Pursuant to FRCP Rule 42(b) directing a June 10, 1974 trial on the copyright infringement claims and a trial on Counts 3 and 4 of the complaint and the counterclaim of defendant Sutton-Smith, which are the defamation claims;

(3) Pursuant to FRCP Rule 26(c) staying all discovery proceedings relating to the defamation claims pending the determination of the copyright infringement claims; and

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(4) Pursuant to FRCP Rule 37 compelling plaintiff

and additional defendant Prentice-Hall, Inc. to submit within
five (5) days complete answers to defendants' interrogatories
and complete responses to defendants' request for the production
of documents, and to pay the reasonable expenses, including
attorneys' fees incurred in making this branch of the within
motion.

Edward A. Miller

Edward A. Miller

John C. Lankenau

John C. Lankenau

Sworn to before me this

13th day of May, 1974.

[Signature]
Notary Public

[Faint Notary Seal]

EXHIBITS ANNEXED TO FOREGOING JOINT AFFIDAVIT

EXHIBIT A - (COPY HAS BEEN SUPPLIED THE COURT)

66a

COMPILATION OF APPROXIMATELY 400 PASSAGES WHICH HARPER
& ROW AND THE AUTHORS BELIEVE WERE ABSTRACTED FROM MUSSEN,
CONGER & KAGAN, A COPY OF WHICH WAS SUBMITTED TO THE
COURT.

EXHIBIT B - CHILD PSYCHOLOGY REPORT

I. Recommendations

It is recommended that Appleton-Century-Crofts publish a text in child psychology with following content, sequencing, and weighting:

		<u>Weight</u>
Part I Theories of Development	81 pp.	12%
Part II Genetics	54 pp.	8%
Part III Pre-natal Development	67 pp.	10%
Part IV Infancy: The first Two Years	160 pp.	24%
Part V Pre-school Years: Two to Six	114 pp.	17%
Part VI Middle Childhood: Six to Twelve	114 pp.	17%
Part VII Adolescence: The Teen Years	60 pp.	9%
Part VIII Adulthood: The Mature Individual	20 pp.	3%
Total	670 pp.	100%

The number of pages shown includes the space allocated for that section to chapter summaries, key concepts, and chapter bibliographies. It does not include the pages for the glossary and the index at the end of the book.

The basis for these recommendations is explained in detail in the following report.

II. ADOPTION DATA

Research data shows that the four leading texts in the field of child psychology account for 50% of adoptions in this course. These four books are:

Mussen, Conger & Kagan:	<u>Child Development and Personality</u>
Stone & Church:	<u>Childhood and Adolescence</u>
CRM:	<u>Developmental Psychology Today</u>
Hurlock:	<u>Developmental Psychology</u>

We note from the following table that Mussen does less well in the SU's than in JC's, but still has greater strength in the SU's than any of the other books. Stone does slightly better than Mussen in the P4 market (private 4-year colleges), and Stone is Mussen's closest competitor overall. In JC's, Hurlock's Developmental Psychology is a close competitor to Mussen, but is no threat at all in SU's, which is the largest share of this market, or in the P4's.

Table I

Text	JC's	SU's	P4's	All Respondents
Mussen, Conger & Kagan	19%	14%	18%	17%
Stone & Church	14%	10%	20%	15%
CRM: Dev. Psych. Today	5%	6%	15%	10%
Hurlock: Dev Psych.	17%	4%	7%	8%
Other	<u>45%</u>	<u>66%</u>	<u>40%</u>	<u>50%</u>
TOTAL	100%	100%	100%	100%

Books in the "Other" category include Kennedy, Johnson & Medinnus, McCandless, and numerous other, but none has sufficient strength to threaten the leadership of the four top books.

Statistical estimates of the size of the market in child psychology, based on survey data, are as follows:

<u>Child Psych. Students</u>	
JC's	145,000
SU's	186,000
P4's	<u>144,000</u>
Total	475,000

Applying the percentages of Table I, we project the following sales figures for the four leading texts:

<u>Child Psych. Students</u>	
Mussen	80,000
Stone	71,000
CRM	47,000
Hurlock	<u>38,000</u>
Total	236,000

Mussen leads in adoptions, and in number of users, and is therefore, the model book. However, other data in the questionnaires reveal points of dissatisfaction with Mussen. The proposed ACC text will differ from Mussen in those areas where respondents indicate dissatisfaction with Mussen, and thus conform more closely to what the market says it wants in a child psychology text.

III. CONTENT

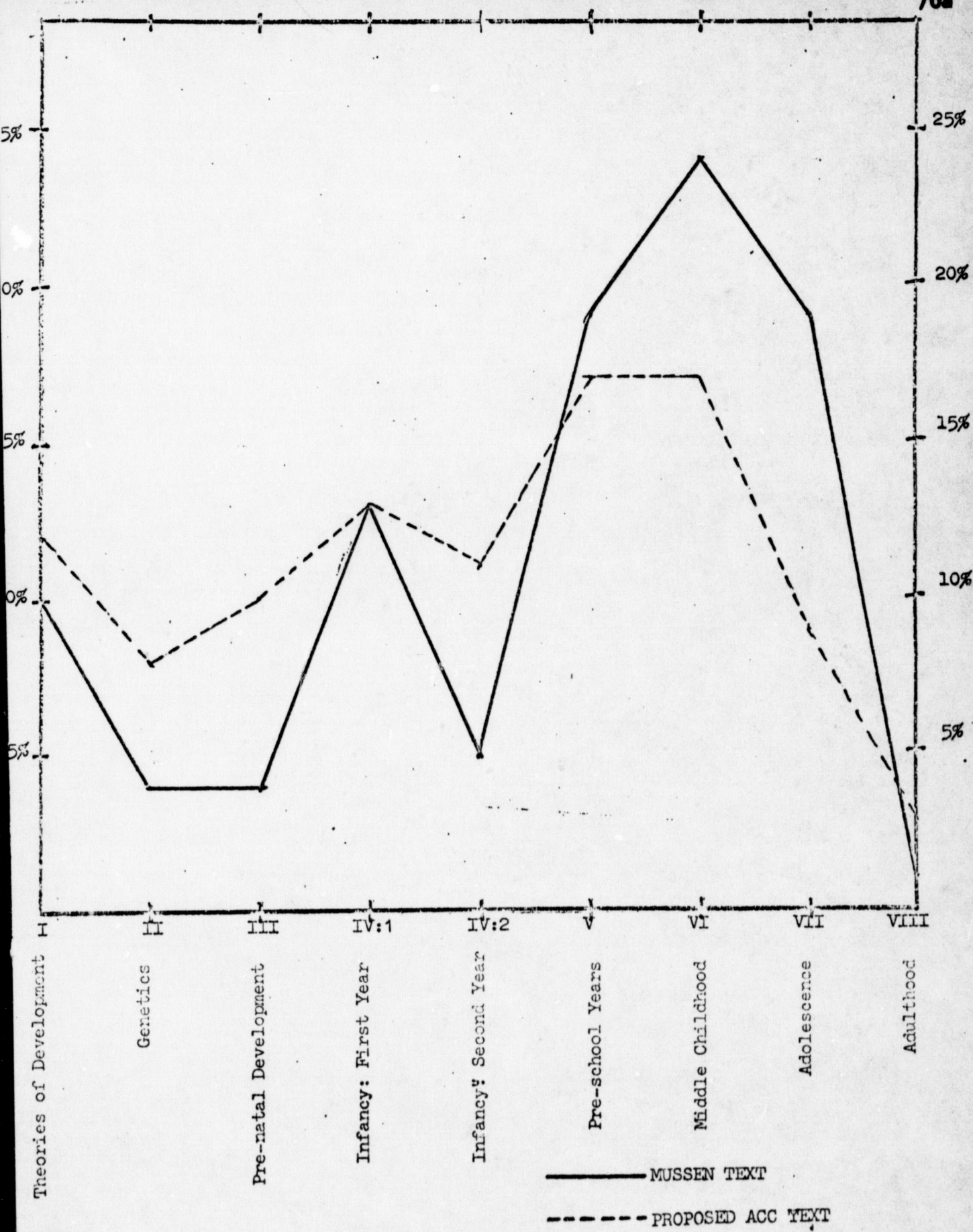
Mussen, the leading book, serves as the content model, in terms of topics to be included, weighting of the topics, and sequencing, of the

topics. When we consider how the content is presented, we shall see a need to consider also some questionnaire data on Stone & Church, as a clue to needed modifications in Mussen. This data reveals areas where Mussen gets less approval from its users than Stone does from users who have adopted that text, the second book in the market. First, let us examine the weighting table, relating the Mussen text to what respondents tell us about the course.

TABLE II

	JC's	SU's	P4's	Mussen users	All respondents	Mussen text	Proposed ACC text
1. Theories of Development	12%	11%	10%	12%	12%	10%	12%
2. Genetics	6%	8%	7%	10%	8%	4%	8%
3. Pre-natal Development	9%	9%	11%	12%	10%	4%	10%
4. Infancy 1st year	13%	13%	13%	15%	13%	13%	13%
2nd year	10%	11%	11%	11%	11%	5%	11%
5. Pre-school	9%	17%	16%	16%	17%	19%	17%
6. Middle Childhood	17%	19%	15%	14%	16%	23%	17%
7. Adolescence	10%	9%	11%	9%	10%	19%	9%
8. Adulthood	3%	3%	5%	4%	3%	1%	3%
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	99%	100%	101%	101%	100%	98%	100%

Now, let us consider separately each of the eight topics.



The ACC proposed text requires a 2% increase over the Mussen text in theories of development, which included Mussen's chapters 1 and 4. When respondents were asked to evaluate their current text in regard to theory, 43% of Mussen users said there was not enough theory. We also note that both SU's and JC's want more theory than Mussen currently supplies.

The proposed ACC text requires a 4% increase in coverage of genetics (Mussen's chapter 2), and 6% increase in pre-natal development, (Mussen's chapter 3), resulting in 10% increase in Part I of Mussen's book. Mussen users give even greater emphasis to these two topics than does the market as a whole. We recommend meeting the requirements of the total market and the resulting text will still be much closer to what Mussen users want than is the present Mussen text. d

The first year of infancy is treated by Mussen in chapters 5 and 6. Since the weighting of these chapters, as Mussen does it, satisfies respondents in all types of schools, and is only 2% below what the Mussen users say they want, we recommend leaving the weight at 13% of the book. In the second year of infancy, chapter 7, Mussen is very low, and we recommend here an increase of 6% as desired by Mussen users and by all respondents. This will be a total of 24% of the book given to the first two years of life, Part II of Mussen's book.

So far, we have been recommending increases in the Mussen weighting. We come now to three long sections of the book where all segments of the market wish to give less emphasis than the Mussen text does.

First we recommend a 2% cut in Mussen's coverage of the pre-school years. Here, we use the weight of 17% which satisfies all respondents and especially the SU's, and which is only 1% higher than what Mussen users say they want.

The section on middle childhood represents 23% of the Mussen book. But Mussen users want only 14% of the course to be spent on middle childhood. Our proposed ACC text gives a weight of 17% to middle childhood, a figure that balances the desired weight of all respondents (16%) against those of the SU's (19%) and JC's (17%) in particular. This 17% figure will result in a 6% reduction in Part IV of Mussen's book.

Again, in his treatment of adolescence, Mussen is considerably higher than what the market says it wants, and we recommend a reduction of 10% in Part V of Mussen's text. The 9% figure we recommend is exactly what the SU's and Mussen users want, and only 1% below what all respondents want.

Mussen does not have a section on adult years; only a very brief epilogue on the subject of emotional maturity. However, our respondents, including those who are now using the Mussen text, indicate they wish greater coverage for adult years than the Mussen text. Mussen's coverage is 1%. We recommend 3% in the ACC text, the figure that SU's want and that all respondents together want. e

Examination of the data in Table II shows clearly that the major thrust of the course is in the childhood period, birth to age twelve: 57% compared with 13% weight to years after twelve, and 18% to the pre-birth period. This is undoubtedly a factor in the greater success of Stone and Mussen as compared with the next two books, CRM and Hurlock, which cover the whole life span, womb to tomb, in detail. CRM give 32% weighting to the years after twelve, and Hurlock (Developmental Psychology) give 63%. Below we summarize the comparison of the Mussen text with what respondents want as shown in Table II. By following the survey data, the ACC book will be more successful in meeting market requirements.

	<u>All Respondents</u>	<u>Mussen text</u>
Theories of Development	12%	10%
Genetics and Pre-natal Dev.	18%	8%
Birth to age twelve	57%	60%
Age twelve to maturity	13%	20%
	<hr/> 100%	<hr/> 98%

Using some of the data from Table II, we have also prepared a graph, attached hereto, which compares Mussen's weighting with the weighting in the proposed ACC text, showing how weighting increases in the early part of the text will be balanced off by reduced weightings in the later sections.

It should be noted that there is strong consistency in the data presented in Table II. The maximum range of the data, for each topic, by various categories of respondents is four percentage points, and in most cases only one or two percentage points. Thus the evidence for making the proposed changes in the Mussen model is very strong. Appendix IV shows the relationship between actual number of pages in the Mussen, Greger & Kagan text and in the proposed ACC text.

B. SEQUENCING

1. The approach

The four leading books in the child psych market all have basically the same approach to sequencing. These four, Mussen, Stone, CRM, and Hurlock, have a chronological approach, considering the whole person at various stages of development from conception to adulthood. Other books take a topical approach, grouping material under chapter headings such as the self-concept, language acquisition, intelligence, achievement, and sex-typing. Kennedy is the leading book which takes the topical approach, but has only 6% of the market, and ranks in fifth place in adoptions. Not only does adoption data favor the chronological approach, but the majority of respondents stated directly that this is the approach they prefer. We asked the question, "Do you prefer a textbook in which the material is organized chronologically (e.g., pre-natal, infancy, pre-school, etc.) or by topics (e.g., intelligence, achievement, anxiety, etc.)?" The response was:

Chronological

57%

Topical	<u>43%</u>
Total	100%

73a

Users of the four leading books also indicate strong satisfaction with this approach:

	<u>Mussen</u>	<u>Stone</u>	<u>CRM</u>	<u>Hurlock</u>
Chronological	67%	83%	69%	64%
Topical	33%	17%	31%	36%

We therefore strongly recommend use of the chronological approach in the proposed ACC text.

2. Placement of theory section

Sequencing of the developmental topics in the child psych course is built-in by the choice of the chronological approach, beginning at conception and continuing to maturity. However, there is one respect in which the two leading books vary in sequencing, and this is in placement of material on theories of development. Mussen begins with this topic, amplifying it later in chapter 4. Stone places this material between his sections on infant and toddler, not considering major theories until the child has reached 15 months of age. Questionnaire data shows that the modal number of respondents prefer to treat theories of development as the first topic in the course, and this is true in all three types of colleges. (By modal number, we mean that more respondents choose this sequence than choose any other.) We therefore recommend that the ACC text follow Mussen in placing theories of development first. In fact, our respondents give full treatment, (12% of the course) to this topic, at the beginning of the course. To meet this sequencing preference, Mussen's fourth chapter on learning and development should be placed in or directly after chapter 1, at the beginning of the book.

3. Relation of topics to exact age.

Topics used in our questionnaire and again in our projected table of contents represent standard categories found in the child psych literature. But there is no hard and fast pattern to indicate the exact ages which those categories represent. Nor is it desirable to do so, since child development represents a flow of events, rather than a rigid step-by-step progression. There seems, then, since Mussen is the leading book in the field, no reason to vary substantially from the categories he uses. "The first two years" is a self-explanatory designation. "The pre-school years" then refers to age two to age six, the normal age of entering grade 1, or as the children call it, "real school." A further breakdown within this category, treating children two to four separately from those four to six, would not cause any problems. Similarly, the period Mussen designates as "middle childhood," ages six to twelve, can be further broken down to subcategories by age. However, none of the four leading books does this, focusing instead on various aspect of development rather than on sharply delineated age groupings. It is our recommendation, in the absence of evidence to the contrary, that the ACC text follow

Mussen in treating the years of middle childhood as one large age grouping, 74a
without further specific breakdown by age.

C. OTHER CONSIDERATIONS IN CONTENT

1. Subject matter within content topics

At this point, another aspect of weighting must be considered. The chronological approach is clearly the one the majority of child psych teachers prefer to use. Transversing the growth stages, however, is an overlay of four major aspects of human development: social, emotional, physical, and intellectual. A felicitous unifying factor in the Mussen book is the use of the concept of personality to bring into focus these four topics. We might state this as a formula. Physical Development + Intellectual Development + Social Development + Emotional Development = Personality. However, we find specific items of content which Mussen users would like to see emphasized to a greater or lesser degree. For instance, we asked respondents to evaluate their current texts in regard to coverage of social aspects of development. Our data shows that 59% of Mussen users are dissatisfied with their book in this respect. Only 39% of Mussen users consider their book about right in treatment of sociology and social psychology in its relationship to child psychology, as compared with 71% of Stone users who consider their book satisfactory in this regard.

"How do you assess your current textbook with regard to sociology/social psychology?"

	<u>Mussen users</u>	<u>Stone users</u>
Too much	4%	0%
Too little	59%	29%
About right	39%	71%

Part of the reason Stone users are better satisfied than Mussen users in this regard is undoubtedly due to the treatment of the baby's cultural heritage in chapter 3, and again in the section on pathology of the environment in chapter 13. We recommend that the ACC text include a more complete treatment of social factors in development than does the Mussen text and recommend that Stone, the strongest competitor to Mussen, is a more adequate model in this characteristic.

Furthermore, respondents have told us in response to the question, "How much coverage do you give to the following topic areas?", that they give light treatment to topics of physiology and physical development, and heavy treatment to social development. Child psych normally has a prerequisite of introductory psych of general psych, where physical structure of the body, particularly the sense organs, is heavily stressed, and there is no need to reemphasize this material in a child psych course. We, therefore, recommend a relative increase in Mussen's emphasis on social development, at the expense of physical development in the proposed ACC text. Next we consider response to the question, "To which theorists and/or researchers would you like your text to devote more space?" The name most frequently mentioned by all respondents was Piaget, and 30% of Mussen users specifically requested a more complete treatment of piaget. The next most frequently mentioned name was Erik Erikson, though here the percentage of Mussen users who requested a more thorough treatment was only 17%. These are not high percentages,

but when we relate them to data showing that 43% of Mussen users think his book does not have enough theory, they become more significant. A re-examination of Table I will show that we have recommended a 2% increase in Mussen's coverage of theories of development, and we now specifically recommend that this increase be devoted to Piaget and Erikson. More coverage of the work of Piaget will give greater relative weight to cognitive development, or the intellectual aspect of development. More coverage of the work of Erikson provides for heavier treatment of emotional development, and especially the self-concept.

2. Practical Applications

Another way in which Mussen fails to meet the requirements of the market as well as Stone does is in the incorporation of practical applications of psychological theory and into his text. When asked to research and evaluate their current texts in this regard, users responded as follows:

	<u>Mussen users</u>	<u>Stone users</u>
Practical applications		
Too little	67%	22%
Too much	0%	0%
About right	33%	78%

We relate this interest in a practical textbook to what we have learned about the kind of students who take the child psychology course. They are more often education majors than psychology majors, and many of them are students preparing for careers in nursing, social work, home economics, or law enforcement. In other words, they take child psych as a tool subject, rather than because they intend to become psychologists. We asked the question, "Are your child psychology students mostly education majors, psychology majors, other; please specify:" and received the following response:

	<u>JC's</u>	<u>SU's</u>	<u>P4's</u>	<u>All Respondents</u>
Educations majors	40%	57%	50%	49%
Psychology majors	16%	29%	35%	26%
Other	44%	14%	5%	24%

It appears to us that Mussen actually contains a substantial amount of practical information, but that it becomes submerged in the wealth of references and quoted passages. (A comparison of Stone's section on toilet training beginning on page 263 with Mussen's section beginning at the bottom of page 261 reveals differences in approach between the two books.) We therefore cite here user opinion on the matter of references:

<u>References</u>	<u>Mussen users</u>	<u>Stone users</u>
Too many	17%	0%
Too few	8%	14%
About right	67%	86%

While 67% of Mussen users say their text is about right in number of references, there are 17% who say there are too many references compared with 8% who say there are too few. More Stone users are satisfied with their book in this regard (86%), while none say there are too many and 14% say there are too few. The sample pages in Appendix II show Mussen has

eight numbered references in these two pages, compared with four in Stone. Of the eight references in Mussen's pages, four are long quoted passages and two are short quotations. Stone uses no direct quotations from other sources in his two pages. We recommend that the number of references in the Mussen model be reduced, especially in the number of passages quoted.

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We are also concerned with opinion on the length of the books as evaluated by current users. Questionnaire data is as follows:

<u>Length of book</u>	<u>Mussen users</u>	<u>Stone users</u>
Too long	41%	22%
Too short	4%	9%
About right	56%	70%

Stone users are considerably more happy with their 616-page book than are Mussen users with their 795-page book. In other words, we cannot recommend that Mussen be expanded by elaboration of practical applications of research data. Instead, we recommend a reduction in the number of references and quoted passages as indicated on the previous page which will then increase the relative weight of the practical applications.

Child psychology is normally a one-semester or one-quarter course, with a pre-requisite of introductory or general psychology, and this should be kept in mind in determining the ultimate length of the book, as well as its content. Page length of some well-known books in the field is as follows:

CRM	575 pp.
Kennedy	604 pp.
Jersild	610 pp.
Stone & Church	616 pp.
McCandless	671 pp.
Johnson & Medinmus	677 pp.
Thompson	714 pp.
Mussen, Conger & Kagan	795 pp.
Hurlock	926 pp.

*Sutton - 616 pp.
same text
at 575 pp.
we had recommended
670 pages.*

Questionnaire data shows that 90% of Hurlock users consider her 926 page book too long.

3. Case studies

Mussen devotes a total of 15 pages to two parallel case histories, placing segments of the material at four different age levels corresponding to Parts II, III, IV, and V, of this book. We asked respondents to evaluate their current texts with regard to case studies, and received the returns indicated in the following table.

How do you evaluate your current text with regard to case studies?

	<u>All Respondents</u>	<u>Mussen Users</u>	<u>Stone Users</u>
Too many	4%	0%	0%
Too few	56%	59%	61%
About right	40%	41%	39%
Too long	2%	0%	0%
Too short	22%	17%	14%
About right	76%	83%	86%
Too detailed	6%	6%	0%
Too superficial	28%	35%	14%
About right	66%	59%	86%

Since 59% of Mussen users, and 56% of all respondents, want more case studies in their texts, we recommend that data from research using the case study method be incorporated in each unit of the proposed ACC text.

IV. FEATURES

A. Reading Level

Mussen users are satisfied with the reading level of the book. 85% say the level of discourse is about right; 74% say the depth of coverage is about right; 63% say the breadth of coverage is about right. However, they are less sanguine about student interest in the text. The following survey data shows that Mussen is considered less adequate in interest to students than either Stone or CRM.

<u>Interest to Students</u>	<u>Mussen Users</u>	<u>Stone Users</u>	<u>CRM Users</u>	<u>Hurlock Use</u>
Adequate	74%	90%	85%	66%
Inadequate	26%	10%	23%	33%

Part of the explanation of this may be found in the sections on density and illustrations below.

B. Density

The rank order of the four leading books in interest to students is: Stone, CRM, Mussen, Hurlock. The rank order in average words per page is: Hurlock, Mussen, Stone, CRM. Sample pages of these four texts, attached as Appendix II, indicate the visual impact of the density of the various books. The figures on density (words per page) are as follows:

	<u>Mussen</u>	<u>Stone</u>	<u>CRM</u>	<u>Hurlock</u>
Average words per page	516	440	247	548
Total pages in book	795	616	575	926
Text pages in book	759	553	508	708
Estimated total words	401,644	247,320	125,476	507,284

Mussen is the leading book in adoptions, but it ranks third in interest to students of the four leading books, and it ranks second in density of the pages. Figures for these four books show an inverse relationship between interest to students and density of the pages: more density = less interest. This is an area where the ACC text can improve on the Mussen text, and thus insure greater acceptance in the market.

*Sutton 2nd ed.
can be out of
book - 2 1/2
and small!*

C. Illustrations

Mussen is lowest of the four leading books in number of illustrations (charts, tables, photos, drawings) per hundred pages of text - only 13 averaging out to one in every eight pages. The data below tabulates photos in the respective texts separately from charts.

	<u>Mussen</u>	<u>Stone</u>	<u>CRM</u>	<u>Hurlock</u>
<u>Incidence per 100 pages (estimated)</u>				
Photos and drawings	8	32	71	6
Charts and tables	<u>5</u>	<u>0*</u>	<u>19</u>	<u>24</u>
	13	32	90	30

* Stone actually has three tables in his book, but this averages out to a number less than 1 per 100 pages.

Related to the above table is questionnaire data showing that more Mussen users are dissatisfied with their book in this regard than any of the other three leading books. Respondents were asked to evaluate their current texts in regard to illustrations. The response was as follows:

<u>Illustrations</u>	<u>Mussen Users</u>	<u>Stone Users</u>	<u>CRM Users</u>	<u>Hurlock Users</u>
Too many	0%	5%	0%	10%
Too few	42%	33%	29%	10%
About right	58%	62%	71%	80%

Though 58% say the number of illustrations is about right, some consideration should be given to the 42% who say they want more illustrations. We therefore recommend the Appleton text to include 20 to 22 small charts, tables, or salient photographs, per 100 pages, or one for every five pages. This would place the ACC text about halfway between Mussen and Stone in number of illustrations per 100 pages.

D. Glossary

Newer books in child psychology are including a glossary, and there is strong endorsement of this feature in our survey data: 67% of all respondents said they wanted a glossary. CRM has a glossary of 16 pages; Kennedy, another 1971 book, gives 14 pages to glossary. Munsinger, a third 1971 book, has a 20-page glossary. We recommend inclusion of a glossary in the new Appleton text.

*3rd ed.
1971
16 pages*

E. Chapter Summaries and Key Concepts

79a

Mussen has a total of approximately 18 pages given to chapter summaries for his 15 chapters. Other books which use chapter summaries are Kennedy, McCandless, and Johnson & Medinnus. Kennedy also presents key concepts as a review feature at the end of each chapter. Questionnaire respondents show clearly that they want these study aids, and this interest pervades all three types of colleges. Our table shows the interest in a glossary, as well as in summaries and key concepts:

<u>Study Aids Preferred</u>				
<u>Study Aid</u>	<u>JC's</u>	<u>SU's</u>	<u>4 Yrs.</u>	<u>All Respondents</u>
Glossary	68%	62%	70%	67%
Chapter summaries	71%	68%	60%	67%
Key concepts	81%	79%	62%	72%

On the basis of this data, we strongly recommend inclusion of a glossary, chapter summaries, and listings describing key concepts in the new ACC text in child psychology.

With respect to bibliographies at the end of each chapter, and the index at the end of the book, there is no reason to deviate from Mussen's model, though the actual volume of listings in index and bibliography will shrink somewhat through following our recommendation on reducing the number of references and quoted passages.

F. Supplementary Materials

An instructor's manual is available for all leading texts in child psychology, and should be included in the plans for the ACC text. We also have questionnaire data showing that 65% of respondents would like to have a supplementary reader incorporated with the text. In the SU's, 69% of respondents want a supplementary reader.

EXHIBIT C - LETTER FROM BETTY JANE SHAPIRO TO PHYLLIS PERRY
DATED APRIL 18, 1972

80a

April 18, 1972

Mrs. Phyllis Perry
617 Palomas Drive N.E.
Albuquerque, New Mexico 87108

Dear Phyllis:

I was pleased to learn that you would be able to do the child development workbook and test item file and to supervise Mark Nero on one other supplement.

Enclosed for your use are the following items:

1. A writer's kit, which contains suggestions from our production department for preparation of manuscript.
2. Chapters 2 and 3 of the Child Development manuscript. Chapter 1 is a general introduction, so it will not affect your work on later chapters.
3. An outline of the entire text.
4. A copy of Mussen, Conger, and Kagan: Child Development and Personality. This book will give you a better idea of what goes into succeeding chapters - until you receive our manuscript.
5. Content and style guidelines from our department.
6. Sample pages from another workbook. *Heath which one?*
7. Billing forms for the future and for American History.
8. A package of our special typing paper (by separate post).

If you have any questions, please do not hesitate to call me.

Sincerely yours,

Betty Jane Shapiro
Managing Editor
Product Creation

BJS:rr
encl.

*Am Irr?
no - she
did some
TK history
questions
h...*

FIRST TWO YEARS

CHAPTER: SOCIAL LEARNING

MUS5 ch6

Soc. i.

EXHIBIT D -- EXAMPLE OF INITIAL OUTLINE

81a

I Intro

The ^{reaction} responses that an infant receives to his
responses (crying, sucking, babbling, movements, etc.)
shape his development.

Elaborate idea -- give examples of -- See Mus 208-210

Close relationship between mother & child - social
interaction between the 2

MUSS
CH 16

Sec L - 2

next of attachment

Exhibit D - Example of Initial Outline

82a

1. Explain ~~simple~~ early social learning view
that has since ~~proven to be~~ ^{been} shown to be
more complex

SEE MUSS 210, 211

Importance

2. Importance of interaction with an object to which he
can cling during 1st few months of life.

~~Fear~~ HARLOW exp with monkeys & terry-cloth vs wire-mesh
mothers. / Fear provoking stimulus introduced.
SEE MUSS 211, 212

RHEINGOLD - 10 wth old ch - SEE P 227 MUSS

3. Social responsiveness & relationship to a
nurturant & socially stimulating caretaker:
generalization of response.

RHEINGOLD '56: SEE MUSS 218

4. Spontaneous?

MUS
CH 6

anger + the Feeding Situation

Exhibit D - Example of Initial Outline

83a

~~Why this is good~~

Social interaction - ~~between~~ + stimulation

of parent-child as more important

than mode of feeding - little as breast

controversy less important than above according
to latter theory

demand vs schedule feeding -

importance of subordinate to mother, child
relationship

The South

Exhibit D - Example of Initial Outline

84a

Unlearned differences among people
in the tendency to smile

MUSS P 222

MUSS
CH 6

newborns &

1. ~~Explanatory of a schema~~

Muss
C.H.B.

Exhibit D - Example of Initial Outline

85a

~~Attachment & Anxiety~~

Attachment & Anxiety

- A. Stranger anxiety
- B. Separation anxiety

Stranger Anxiety

- Distress in response to schema discrepancy that the inf. has established.
- Extension to stranger - age when this is exhibited - describe behavior
- Proximity to mother reduces the fear.

1. Describe behavior - age when exhibited
2. Interpretation of discrepancy to a schema
Muss 224 225
3. Proximity to mother reduces the fear

Seq-

MUS
CH 6

Separation Anxiety

1. Describe . Give age's

2. Interpretation

- discrepancy from a schema

- attachment interpretation

- fallacy of conditioned ~~response~~ stimulus
interpretation

MUSS ch 6

See

Exhibit D - Example of Initial Outline

87a

Lack of Primary Caretaker - The Institutional Child

~~Start of primary care~~
~~affected the following:~~

~~- affects social & normal behavior~~

~~- decreased ability of adult attachment
which result in smaller likelihood
of strong & separate identity
- retarded language development.~~

~~Also also~~
~~observed~~

Individuals show behavioral retardation in
institutionalized child

- affects social behavior
- indifference to environment
- passivity, withdrawn

~~with~~
- little vocalization -- retarded
in speech development

- lack of attachment to an adult &
conseq. so little stranger or
separation anxiety.

- undernourished
- retarded motor develop.

Description
des

Presence of Lymphoma¹² (Muss)
" (Muss)

(Caution re interpretation)
2. Possibly variable that affect behavior.

- may not
- some think absence of mother figure
- others "deprived sensory environment, poor nutrition, disease, etc."
- case must be taken in taking maternal deprivation interpretation
- Studies of not more than 1
caution go on to indicate that
it is not it may not affect development
adversely
- some advantages shown in some studies.

3. Follow-up studies in later years of institution. children
Goldfarb studies? (Miss)

~~It is not a simple matter~~

Child rearing techniques

Muss
CH 6

Exhibit D - Example of Initial Outline

89a

- Socio-economic factors & variations in child rearing --

stimulation affects of

~~variables~~

~~See page 236~~

-- less variable & distinctive stimuli:

(See Muss 236)

~~cleaning~~

~~cross-national comparison~~

~~class differences and use~~

- Feeding & cleaning

-- class difference + feeding technique

(about 25 yrs. ago)
formerly it was found that more permissive
feeding techniques among lower-than
among middle class parents. --- however
recent studies show reversal of
this finding

--- cross national difference in feeding &
cleaning.

Sub

~~conclusions covered on 11-5-55~~

NEW p. 11 concept seems unique - nice to include affective of
 p. 12 overstatement of original position on abilities to
 converse

p. 13 what if coll. undisturbed, we call associative system
 mention difficulty of researching assoc. - behavior
 changes seem unique good

p. 15 we call directed thinking problem solving

p. 13-15 in intro we need to define MCK & SFC's symbol/
 concept. Also add rules. Images also

p. 429 too general SFC 405 examples of play
 with language manip. of symbol

p. 15 cliché imagery - based on MCK 431-2 but
 revised somewhat - can we find another

E p. 16 group besides 9th as this is a dead-giveaway -
 provide citation or give other example?

E. 11 p. 15 use of criminological attributed to MCK

Hollin relies but is completely rewritten

order: attention: why not place this topic
 after? reordering

MCK
 p. 12 changes in focus easier for older children
 account of prep. experiment is so condensed as to
 be unintelligible

NEW p. 17 we have added social factors in attention [MCK re-
 talks about maturation & attention, which we mention;
 p. 18 we also include achievement as concern for maturation; social

EXHIBIT F - INSTRUCTIONS FOR REVIEWING MANUSCRIPT

91a

Content Control

Evaluate the content of each chapter in light of marketing objectives and the performance of competing books.

- call attention to major omissions based on the model and the marketing objectives
- evaluate the organization, noting significant departures from the model, whether advantageous or not
- identify problems in transition and repetition
- suggest methods of reorganization or condensation
- note discrepancies in interpretation or fact
- note bias or undue emphasis
- note verbal similarities to the model
- indicate the strengths of the chapter

Prepare a brief memo (1-3 pages single-spaced) summarizing the key points of the evaluation.


Since you will not be talking with the editor at length about these analyses, it is important to provide succinct reasoning for statements of major points. If possible, phrase the critique in operational terms. For example, don't say "This section is disorganized"; instead recommend placement alternatives. Try to provide page numbers for manuscript and model references, as part of your operational emphasis. Indicate when suggestions are merely alternative means of organizing.

Resist the temptation to impose your own view of the subject matter. The model and the marketing report are the arbiters combined with your own common sense.

A sample critique is attached.

EXHIBIT G - LETTER FROM LYNNE LUMSDEN TO BRIAN SUTTON-SMITH
DATED OCTOBER 26, 1971

92a

APPLETON-CENTURY-CROFTS 
EDUCATIONAL DIVISION/MEREDITH CORPORATION

440 PARK AVENUE SOUTH, NEW YORK, NEW YORK 10016
(212) 689-5700

October 26, 1971

Professor Brian Sutton-Smith
Department of Psychology
Columbia University
New York, New York 10027

Dear Professor Sutton-Smith:

It certainly was a pleasure to speak with you this morning about our new project in child psychology. Because we could not talk longer, I will try to describe some of the details of our program in this letter. I do hope you will give our proposal serious thought and will become as excited about our new publishing procedures as we are.

In the traditional sense of the word, you would not be required to "write" the book--the actual amount of time you would spend in writing (or re-writing) would depend on your schedule, that is, depending on how much time you chose to devote to a particular idea or area of the basic text. Your name would be the only one credited as the author. There would be no consulting editor, and therefore, no other person would receive a royalty. However, your role and commitment would be similar to a consulting editor's as far as the amount of actual writing time. Your role would be more like a co-author's for the time devoted to thinking about the subject and planning the project.

Virtually, what we are proposing is a totally new way to produce a child psychology textbook that will be used by hundreds of thousands of students. The book will be on a two-year-revision cycle so your financial benefits from the project would be on-going for the next ten years, at least. Your contribution to the development of this project would be your academic background and achievements, your critical and editorial skills, as well as your ideas and strong feelings about the approach and emphasis of such a book.

Appleton-Century-Crofts will contribute extensive market research on the basic course and on the leading competition, compilation of materials and primary sources, writing and rewriting, all art work, permissions, design, manuscript development (editing and copyediting), promotion, and our total sales effort. In addition, we will commission specialists to prepare end-of-chapter or end-of-text materials such as bibliographies, indexes, glossaries, appendixes, suggestions for further reading, or any other apparatus that seems beneficial for the sales of the text. We will also commission the preparation of any supplementary materials that you and our editors deem necessary such as an instructor's manual, student guide, student workbook, test item files, answer manuals. We would also guarantee that such materials would be published simultaneously with the text, when they are most useful as selling points as well as teaching aids.

- 2 -

93a

Exhibit G - Letter From Lynne Lumsden to Brian Sutton-Smith
Dated October 26, 1971

The entire project would require only a few hours a week for you to consult with us over a span of four to six months. A good part of the consultation work will be accomplished over the phone or through the mail. The total development time--from the day you sign the contract until the day you receive your complimentary copies--would be about twelve months. We would fit our project around your schedule and would not conflict with your teaching, administrative or research commitments. And in one year's time you would be known as the sole author of the leading child psychology text on the market.

We know our process works, and we know other publishers are trying to find out how to imitate our methods. Because of the overwhelmingly enthusiastic responses we have been getting from prestigious professors, we are certain that they understand the economics of publishing well enough to realize how lucrative this type of project will be, given the little time and effort required of the author.

Please do not hesitate to contact me as soon as you have been able to give further thought to our proposal. I would welcome the opportunity to answer any questions you might have about this project. To help me make my final decision on the perfect author for this project, I would greatly appreciate your sending me a copy of your most recent curriculum vitae. If you later chose to work with us, your vita will be given to our advertising department to help them in promoting the text. If possible I would like to show you our process in action and have you talk with our marketing, development, or promotion directors. I am looking forward to hearing from you shortly and to meeting you in person one day soon.

Sincerely yours,

Lynne A. Lumsden

Lynne Lumsden
Editor
College Department

LL/cl

EXHIBIT H - MEMORANDUM DATED MAY 27, 1971

94a

Memo to: T. W. Adam

May 27th, 1971

From: R. S. Loweth

Re: Recommendations for 1973 titles for Product Creation Department

1. Janson - Art History
 2. Irish & Prothro - Introduction to American Government (behavioral)
 3. Samuelson - Economics (theoretical)
 4. Keeton - Introductory Biology (Possibly two or three biology's?)
 5. Mussen - Child Psychology
 6. World Civilization - the 2 vol. & combination 1 vol. B. C. & W.
 7. Leet & Judson - Physical Geology (Possibly SIENK & PLANE)
 8. Morrison & Boyd - Organic Chemistry
 9. Correll & Laird - Modern English Handbook
 10. Kendler or Ruch
- } Double-up
in other
courses first!

Revision of Hickok

Revision of Popenoe

R.S.L.

95a

2. In addition to their motion for preliminary

motions. With respect to such other motions, we adopt, in their entirety, the positions set forth by plaintiff. MEREDITH CORPORATION, in its papers and will not burden this Court with reiterating them. Certain additional points must be made. First, the Meredith papers set forth at length the dramatic evidence of a concerted campaign by the defendant authors and HARPER & ROW to libel BRIAN SUTTON-SMITH and his book "Child Psychology". As I stated on the record, on the deposition of Professor SUTTON-SMITH on Thursday, May 16th, based upon this newly discovered evidence, Professor SUTTON-SMITH and PRENTICE-HALL will seek to amend their answers - Professor SUTTON-SMITH to increase from \$50,000.00 to \$500,000.00 and punitive damages, the amount sought in his counterclaim for libel and PRENTICE-HALL to include in its answer a counterclaim for libel substantially similar to the existing claims of MEREDITH and Professor SUTTON-SMITH. Such amendments will, in no way, impede the preparation and trial of this action since they merely increase the amount involved in the libel claims and inject a new party, PRENTICE-HALL, into such claims. The factual and legal issues raised by such amendments have already been raised in the claims of MEREDITH and PROFESSOR SUTTON-SMITH now before this Court. This intended amendment, however, emphasized the importance of MEREDITH's contention that the serious issue of libel be allowed to proceed to an early resolution in order to stop defendants' malicious accusations against Professor SUTTON-SMITH and his book.

3. The material marshalled in the MEREDITH

papers also serves to explain the principal mystery of the motion for a preliminary injunction - its inexplicable timing. We will discuss below this curious timing, but sufficient to say now that this motion for preliminary injunction is not the product of the normal need of one party for preliminary injunction, but a desperate attempt on the part of the defendants to avoid the issue of their own misconduct, including the personal involvement of trial counsel for HARPER & ROW. This is the only rational reason that such an important motion should be made so tardily and yet with so much haste.

4. With respect to defendants' motion addressed to the interrogatories, the answers of PRENTICE-HALL are forthcoming. Defendants' indignation about our failure to answer interrogatories is inexplicable in the face of defendants' own delay of more than two weeks in responding to MEREDITH's interrogatories. Much of the delay is, of course, the product of defendants' break-neck schedule of depositions.

5. Before leaving the subject of interrogatories so that there can be no mistake, we wish to advise this Court that in the answer to interrogatories, PRENTICE-HALL will take the position that all interrogatories directed to the subject of damages are improper in accordance with the opinion of MR. JUSTICE BENJAMIN CARDOZO, speaking for a unanimous Supreme Court in Sinclair Refining Co. vs. Jenkins Petroleum Process Co. 289 US 689 (1933), a position apparently

affidavit. I realize that MEREDITH interrogatories
arguably call for information related to damages.
However, neither Professor SUTTON-SMITH nor PRENTICE-HALL
has acquiesced in this position.

THE MOTION FOR A PRELIMINARY
INJUNCTION

6. Professor SUTTON-SMITH is submitting
an affidavit demonstrating the complete invalidity of
defendants' claim of copyright infringement. I will
discuss the evidence contained in defendants' moving
affidavit. Here I am at a disadvantage because the
bulk of the depositions taken by defendants have not
yet been transcribed. I have personally read every
deposition taken by defendants which has been tran-
scribed and have personally attended every deposition
taken by defendants which has not been transcribed.
In addition, I have attended portions of the depositions
of defendant authors and personally asked a number of
questions at such depositions. Thus, my description of
such testimony is of necessity based upon my personal
recollection. Of course, this is not as satisfactory
as the stenographic record. Such a difficulty, however,
is the product of defendants' breakneck haste to bring on
this motion in media res.

7. Defendants' case for preliminary injunc-
tion is based upon their compilation of purported paral-
lels between the books in question. This will be

Affidavit of Marshall C. Berger in Opposition to Motion
discussed in Professor SUTTON-SMITH's affidavit, together
with a miscellany of assorted documents, grossly miscon-
strued and taken out of context by defendants.

99a

8. For example, Exhibit "B" to the moving affidavit is the market study report. Defendants quote and emphasize a few sentences of that report. What they do not discuss is the report as a whole which demonstrates that it is nothing more sinister than the book publisher's attempt to find out the type of product its market desires. To do so, it canvassed the market's reaction to not only the defendants' book, but to all competitive books to find out what features were liked and what features were disliked. That, of course, was a prelude not to writing a Chinese copy of defendants' book, but to writing a book which would be better suited to the market than that of defendants or any other competitor.

9. Exhibit "C" is a letter to a person working on the companion workbook, transmitting a copy of defendants' book, for the simple purpose of introducing her to the subject matter of the yet to be written later chapters of the SUTTON-SMITH book. The letter itself indicates that this was designed to be used "until you receive our manuscript".

10. Exhibit "D" was an outline written by the editor of the SUTTON-SMITH book, Julie Small, for her own personal use. The importance of this document can be seen by the diagonal cross-outs appearing on every page of the exhibit. Miss Small has testified at a non-transcribed deposition, at which I was present, that this was only for

on the SUTTON-SMITH book. Defendants have, apparently, tried to confuse this Court on this subject. In paragraph 15, it describes in self-serving terms the final outlines submitted by Miss Small to the freelance writers. Curiously, defendants fail to substantiate their descriptions by annexing any final outline although the entire files of MEREDITH and PRENTICE-HALL were produced for defendants' inspection and copying and virtually all of the final outlines were marked as exhibits at Miss Small's depositions. Instead they choose to annex Exhibit "D" and do so when the context indicates they are talking about a final outline submitted to the author. Since Exhibit "D" was never submitted to the writer, it is totally worthless to establish defendants' contentions.

11. Exhibit "E" is a comment sheet on a manuscript draft calling for use of material other than that contained in defendants' book.

12. Exhibit "F" is directions indicating simply that defendants' book was examined to make sure that no major topic discussed in it was inadvertently omitted. Simply put, defendants' papers are totally inadequate in meeting their burden of demonstration of probable success required in order to obtain the drastic relief of a preliminary injunction.

THE NEED FOR INJUNCTIVE RELIEF

13. Defendants' papers are singularly

injunctive motion - the movant's need for injunctive relief. They tried to finesse the issue by citing at page 23, Rushton vs. Vitale, 218 F. 2nd 434 (2d CIR 1955). As will be demonstrated in our Memorandum of Law, this case has been distinguished from the situation before this Court, and as in most temporary injunction situations, the movant for a preliminary injunction based upon alleged copyright infringement of a book, must show its need for such drastic relief.

14. On the contrary the evidence adduced at depositions has demonstrated the lack of need for such relief. Defendants have alleged that the SUTTON-SMITH book infringes the third edition of MUSSEN, CONGER and KAGAN, but the third edition is no longer on the market and has not been on the market since approximately February 1974. Instead, defendants have been attempting to sell the fourth edition of MUSSEN, CONGER and KAGAN. I, personally, heard Professor MUSSEN characterize the fourth edition of this book as practically a new book. I am annexing to my affidavit as Exhibit "1" an excerpt from the deposition of an officer of defendant, HARPER & ROW, GEORGE A. MIDDENDORF, in which MR. MIDDENDORF concedes that the fourth edition is "completely up to date and brand new book and the so-called (sic) similarity between it and Sutton-Smith was dissipated". These admissions, on deposition by defendants explain why defendants in their moving papers did not choose to discuss their need for this relief - they have no such need.

denial of an injunction is the financial solvency of PRENTICE-HALL. It is a large publicly-held corporation with net assets in excess of \$100,000,000. Defendants have not demonstrated any reason why monetary damages would not be sufficient.

THE HARM TO BE INFLICTED ON SUTTON-
SMITH AND PRENTICE-HALL BY A
PRELIMINARY INJUNCTION

16. Paragraph 27 of defendants' moving affidavit establishes an excellent reason for the denial of injunctive relief. They state "the next three months constitute the most vital months for sales of college textbooks since most university departments order their textbooks for the fall semester during this period". This means the defendants are asking that SUTTON-SMITH and PRENTICE-HALL be enjoined during these three months. Thus, defendants own papers establish that the grant of injunctive relief now will inflict irreparable injury to SUTTON-SMITH and PRENTICE-HALL, by depriving them of sales during the most crucial sales period.

DEFENDANTS' TARDINESS

17. The dispute leading up to this motion has had a long history. It would appear that defendants first heard of a possible claim of copyright infringement some fourteen months ago in March, 1973, when defendant KAGAN wrote a letter to his two co-authors, defendants and HARPER & ROW, placing them on notice of a possible claim for

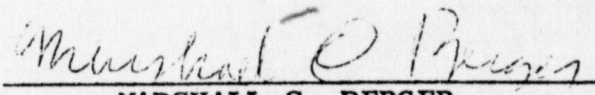
defendants had processed their claim to the extent of compiling a table of purported parallels, which is substantially the same as Exhibit "A" to their moving affidavit herein, and initiating discussions concerning it with MEREDITH.

Although defendants talked at paragraph 2 of their moving affidavit of a "run to the courthouse" by MEREDITH, the fact remains that this lawsuit was instituted not by defendants, but by MEREDITH. The copyright infringement claim was precipitated by MEREDITH's initiation of this action. Defendants may now say that they intended to sue for copyright information, but on this all we have is surmise. In any event, this lawsuit was instituted in December of 1973, some six months ago. Thereafter, extensive discovery was conducted by defendants. So extensive, as I pointed out before, that the bulk of the depositions taken by defendants have not even been transcribed. Yet, now some fourteen months after the defendants were aware of a possible claim, some nine months after they asserted their claim to MEREDITH and some six months after the institution of this action they are now coming before this Court for injunctive relief. The main support they have for such relief is a compilation made at least nine months ago. They do not explain why they are moving for injunctive relief in May, 1974, when they had not moved in September, 1973, or December, 1973. Such unexplained tardiness by itself should defeat this motion for the drastic relief

heightened by defendants' apparent real motive, a
desperation born out of the rapidly accumulating
evidence of a campaign of malicious libel against
Professor SUTTON-SMITH and his book.

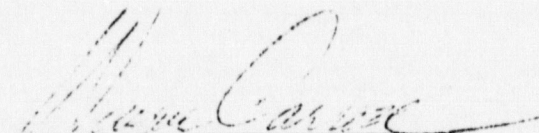
CONCLUSION

18. All I have set forth above and in the
affidavit of Professor SUTTON-SMITH demonstrates the
defendants have totally failed to satisfy any one of the
requirements of a motion for a preliminary injunction -
proof of probable success; need for injunctive relief on
the part of the movant; lack of irreparable injury to be
inflicted on the party to be enjoined; and expedition in
asking the Court for such relief. Such a cumulative
failure not only requires denial of the motion, but raises
grave doubts as to the good faith of the makers.


MARSHALL C. BERGER

Sworn to before me this

20th day of May, 1974.


Notary Public

EXHIBITS ANNEXED TO AFFIDAVIT OF MARSHALL C. BERGER

SOUTHERN DISTRICT OF NEW YORK

- - - - - x

MEREDITH CORPORATION,	:
Plaintiff,	:
- against -	:
HARPER & ROW, PUBLISHERS, INC.,	:
PAUL HENRY MUSSEN, JOHN JANEWAY	:
CONGER, and JEROME KAGAN,	: 73 Civ11 5446 JMC
Defendants,	:
BRIAN SUTTON-SMITH, an individual	:
and PRENTICE-HALL, INC., a Delaware	:
Corporation,	:
Additional	:
Defendants on	:
Counterclaim.	:

- - - - - x

EXCERPT from DEPOSITION of GEORGE A. MIDDENDORF,
taken on behalf of Meredith Corporation, a Plaintiff
herein, at the offices of Harper & Row, Publishers, Inc.,
10 East 53rd Street, New York, New York 10022, on
Wednesday, May 15, 1974, commencing at 10:00 o'clock
A.M., pursuant to Notice, before Thomas W. Murray, a
Shorthand (Stenotype) Reporter and Notary Public within
and for the State of New York.

RALPH FINK & ASSOCIATES

Certified Stenotype Reporters

140 NASSAU STREET

NEW YORK, N. Y. 10038

REctor 2-5566

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A P P E A R A N C E S :

Messrs. LANKENAU KOVNER BICKFORD ABRONS & BEER
Attorneys for Authors Mussen, Conger & Kagan
30 Rockefeller Plaza
New York, New York

BY: JOHN LANKENAU, ESQ., of Counsel

EDWARD A. MILLER, ESQ.
General Counsel
Harper & Row, Publishers, Inc.
10 East 53rd Street
New York, New York 10022

Messrs. MOLINARE, ALLEGRETTI, NEWITT & WITCOFF
Attorneys for Meredith Corporation
135 South LaSalle Street
Chicago, Illinois 60603

BY: GEORGE MC ANDREWS, ESQ., of Counsel

- - -

1
2 BY MR. MC ANDREWS:

3 Q Have you heard how the sales of your Fourth Edition
4 are going?

5 A Looks fabulous.

6 Q Looks fabulous. Do you recall a letter in the files
7 that said you expect to be over the hump with the publication
8 of the Fourth Edition?

9 A That wasn't mine, was it?

10 Q Did you expect the publication of the Fourth
11 Edition to renew the sales of the Mussen, Conger & Kagan
12 book?

13 A Oh, surely.

14 Q Can you tell me why?

15 A Completely up to date and brand new book. And the
16 so-called similarity between it and Sutton-Smith was dissipa-
17 ted.

18 Q Can you tell me was the Third Edition not up to
19 date?

20 A No. It was up to date. But at this time it was
21 five years old.

22 Q Then there is no difference between the Third and
23 the Fourth Edition if it was up to date; is that correct?

24 A You have to rephrase that.

25 Q My question may not be clear. As of last year did

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you consider the Third Edition up to date?

A As reasonably up to date as a book could be that was published in 1969.

May I elaborate on that?

Q Yes.

A Do I have permission?

MR. MILLER: Yes.

A The Mussen, Conger & Kagan books have always led the way so that they are always a little bit more up to date than they normally would be if they were books by other people. Other people catch up with them.

Q Where are the reports on the sales of the Fourth Edition? Where do they go?

A They can be -- Terry Brewer who is on the fourth floor.

Q What is her name?

A Terry Brewer. T-e-r-r-y. It may be Theresa, but I don't really know.

Anyway, she is the one who interacts with the computer.

MR. MILLER: Just on the record, Mr.

McAndrews, we gave you the most up-to-date figures on the sales of the Fourth Edition in the material that we have made available. That was the material

1 that I had told you last week would be had and
2 which I think you first began to look at yesterday
3 morning or Monday morning. You came in early
4 yesterday morning to look at some additional docu-
5 ments relating to the Fourth Edition to be
6 produced. That included the most up-to-date
7 records that we have on sales of the Fourth
8 Edition.
9

10 Q Mr. Middendorf, have you received any reports from
11 the field about the conflict of the Fourth Edition with the
12 Brian Sutton-Smith book?

13 A The Fourth Edition?

14 Q That is right.

15 MR. MILLER: Could you explain what you mean
16 by conflict?

17 Q Have you received any reports from the field about
18 the Brian Sutton-Smith book conflicting with the sale of the
19 Fourth Edition of Mussen, Conger & Kagan?

20 A No.

21 Q Have you received any reports from the field --
22 you said the sales of the Fourth Edition were, what was the
23 term you used?

24 A I am not too sure. I think I probably said
25 fabulous.

1 Q Fabulous. And they indicated that they have been
2 taking adoptions away from Brian Sutton-Smith?

3 A I can't say specifically, but I would assume that
4 such is the case.

5 Q Where do those reports that are coming in go?

6 A They go to Jack Drucker.

7 MR. MC ANDREWS: Counsel, the materials you
8 have produced include those reports?

9 MR. MILLER: As far as I know we have
10 produced all the materials that are in Jack
11 Drucker's files related to the Edition.

12 MR. MC ANDREWS: No further questions.

13 (Witness excused.)

14 (At 11:40 o'clock A.M. the deposition was
15 concluded.)

16 (End of excerpt.)

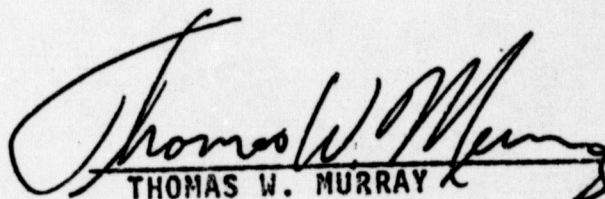
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1
2 STATE OF NEW YORK)
3) SS:
4 COUNTY OF NEW YORK)

5 I, THOMAS W. MURRAY, a Shorthand (Stenotype)
6 Reporter and Notary Public of the State of New York, do
7 hereby certify that the foregoing Excerpt of the Deposition
8 of the witness, GEORGE A. MIDDENDORF, taken at the time and
9 place aforesaid, is a true and correct transcription of my
10 shorthand notes.

11 I further certify that I am neither counsel for
12 nor related to any party to said action, nor in any wise
13 interested in the result or outcome thereof.

14 IN WITNESS WHEREOF, I have hereunto set my name
15 this 15th day of May, 1974.

16
17
18 
19 THOMAS W. MURRAY
20
21
22
23
24

AFFIDAVIT OF BRIAN SUTTON-SMITH IN OPPOSITION TO MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

112a

-----x
MEREDITH CORPORATION,
an Iowa corporation,

Plaintiff,

- against -

Civil Action No.

73 Civ. 5446 (RO)

AFFIDAVIT

HARPER & ROW, PUBLISHERS, INC.;
PAUL HENRY MUSSEN; JOHN JANEWAY
CONGER; and JEROME KAGAN,

Defendants,

BRIAN SUTTON-SMITH, an individual,
and PRENTICE-HALL, INC., a Delaware
corporation,

Additional Defendants
on Counterclaim.

-----x
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

BRIAN SUTTON-SMITH, being duly sworn, deposes and says:

1. I am an additional defendant on the counterclaim in this action and the author of the book Child Psychology. I am making this affidavit in opposition to the motion of the defendants for a preliminary injunction against continued dissemination of that book.

2. Since 1967, I have been a full professor of psychology and education at Teachers College, Columbia University. Also since 1967 I have been Program Coordinator (a position comparable to Chairman of the Department) of the Development Psychology Program of that institution. I am the author of eight (8) books in the field of

child and developmental psychology in addition to the book in litigation. I am annexing to this affidavit as Exhibit "A" a copy of my resume setting forth fully my entire professional work. In particular, I have been teaching introductory courses in child psychology since 1956. In the course of my teaching, I discovered that there was no text in this area which was satisfactory for my purposes. I had disagreements with the philosophies of a number of books including the book Child Development and Personality by Mussen, Conger and Kagan (hereinafter referred to as "M-C-K"). Moreover, I disagreed with the emphasis and coverage of the other books. Thus I felt that more emphasis should be given to such figures as Jean Piaget, Heinz Werner and Eric Erikson. These texts tended to slight or even ignore a number of areas in which I had done research work such as voluntary behavior, particularly play and games.

3. In the Spring of 1971, I approached John Wiley & Sons, Inc., a publishing company for whom I have previously written two (2) books, with a proposed synopsis for a new child development textbook to be written by me. Wiley indicated that the book was geared at a level of sophistication far above that of the average college sophomore more likely to take an introductory course in child development and psychology. Shortly thereafter I was approached both by D. C. Heath and the Appleton-Century-Crofts Division of Meredith Corporation (hereinafter referred to as "Appleton") to write such a textbook for them. I chose to accept the Appleton offer and this ultimately led to the writing of the book Child Psychology.

4. Like many other persons in the academic community, I

have been struck by the rapidly declining reading comprehension of college students. This would seem to indicate that college textbooks should be written with greater emphasis on style, readability and comprehension. One of my reasons in accepting the Appleton offer was the availability of professional writing skill which would allow me to articulate my ideas through professional writers capable of expressing complex ideas in a simple, readable way. I submit that this has resulted in a fundamental difference between my book and M-C-K. M-C-K is written with a ponderous style with heavy use of jargon. The work has an abstract quality and is frequently deficient in affcrding the reader concrete examples of what it is talking about. This can be seen by examining purported parallels 30 and 31. While my book uses the words "infant" or "newborn," M-C-K uses the word "neonate". The subheading in my book "Perception of Changes in Position" is comparable to the heading in M-C-K "Static Kinesthetic Sensitivity", "Perception of Taste" is comparable to "Gustation", "Perception of Smell" is comparable to "Olfaction" and "Perception of Heat" is comparable to "Thermal Sensitivity". I am happy that the ideas in my book are not obscured by a thicket of jargon and difficult sentences.

5. I have testified at length on deposition as to my role in the writing of my book. I understand that my testimony has not yet been transcribed. I will briefly summarize what my role was. My initial task was to set forth the philosophical point of view which would set the tone for the entire work. Thereafter, I would supply the Appleton editor for the book, Julie Small, with a host of

materials upon which to base first Miss Small's chapter outline and then the first draft of the chapter as written by a professional free-lance writer. This material not only included a plethora of books and articles but also my own personal lecture outlines which I have used over the years in teaching my own courses and material written by me specially for the occasion. The furnishing of this material to Miss Small began an intensive period of discussion between us in which we discussed together my concept for the chapter, the highlights I wished to emphasize and the perspective I wished to be used. In addition to my work, Miss Small had the benefit of paid researchers who would furnish the writer of each chapter with abstracts of studies in particular areas to simplify his writing task.

6. In my first deposition on May 7, 1974, I was asked by counsel for the defendants to state for each and every chapter in my book what perspectives I had furnished to Miss Small. Although I was unprepared for these questions, I answered in detail based on the best of my recollection what these perspectives were. After I pointed out that although my answers were rather lengthy, I could probably amplify them if I had time to further examine and reflect upon my book, counsel for defendants asked me to do so and to be prepared to make such amplification on the resumed date of my deposition, May 16, 1974. Thereafter, I intensively examined my book in order to meet the request of defendants' counsel. At the resumed session, my notes about these differences were marked as an exhibit. I am annexing a copy of them as Exhibit "B". Incidentally, despite this burdensome request which

I spent many hours in meeting, counsel for defendants dropped the subject after I got to approximately page 4 or 5 of my book.

6. In Exhibit "B", I set forth my fundamental constructivist, pluralistic, interactionist viewpoint. Of course, these terms are not used in the book. Rather, they represent the academic terms describing the viewpoint permeating the entire work. (Incidentally, I understand from my counsel that Dr. Conger at his deposition did not know the word constructivist nor had he read enough of my book to answer the question of whether or not it had a theoretical framework.) With respect to M-C-K, the third edition, the one involved in this action, is to some extent more pluralistic than the first two editions, but this viewpoint is still inadequate as can be seen by contrasting the third edition of M-C-K with either my book or the fourth edition of M-C-K published after my book was published.

7. I note that defendants place a great emphasis on the similarity of chapter organization between the two books. Both books use a predominantly chronological approach to the subject. That is, after discussion of genetic and prenatal influences, they cover the child through various ages from infancy to adolescence. This approach is, of course, a highly logical approach just as a chronological approach is used in the writing of history and, I have been informed, legal civil procedure. For this reason such an approach has been used by most major textbooks in the field including Hurlock, Stone & Church, Munn and CRM.

8. But saying that both my book and M-C-K use a chronological approach obscures the major differences in organization of

the two books. Chapters 5 and 6 of M-C-K deal with the first year.

Chapter 7 deals with the second year. There follows a section on the child from 2 to 5; another section on the child from 6 to 12 and a concluding section on adolescence. In contrast, Chapters 5, 6 and 7 of my book deal with the infant up to 18 months. Then comes a complete section on toddlerhood or ages 2 and 3, followed by sections on early childhood, ages 4 through 7; a section on the middle years, ages 8 through 12 and finally a section on adolescence. This difference in outline is not an arbitrary reworking of the materials on my part but rather is based upon the theoretical concepts of Piaget who emphasized toddlerhood (2 - 3), the intuitive period (4 - 7) and the concrete-operational period (8 - 12) as distinct phases of child development.

9. Within these broad headings there are other differences in organization. Thus my breakdown on the materials on any particular age group is based upon the approach of Eric Erikson that each individual can be approached as an individual organism, as a person and as a part of society. Thus my book discusses at each stage first the child's physical development, then his intellectual development and finally his social development.

10. After my work and consultations with Miss Small, she would prepare chapter outlines for the free-lance writer. In addition to the outline, the writer would be furnished with what I understand Mr. Locke characterized as a shopping bag full of materials; my notes, the researcher's notes and various books and articles. After he wrote his first draft, I would receive a copy of it and I would make extensive revisions and suggestions on it. Frequently, I would write passages to be included in the revised work. I then would receive a second revision.

Again I would make my revisions. When the work was printed in galleys, I would make revisions. I discussed the book with a number of Ph.D. candidates including David Abrams, Michael Greene, June Reinisch and Lee Peterson and with my colleagues on the Teachers College Faculty including Lois Bloom, Bill Walsh, Herbert Birch and Janellen Huttenlocher. Dr. Bloom made revisions on the galley proofs of the language section of the book.

11. Because of my extensive role throughout the book, I feel I am the author of the book, precisely in the same way that I believe that I am the author of this affidavit although it is being dictated in first draft by my attorney. Of course, his first draft is based upon our conversations and materials I have supplied him, precisely the way the chapter outline ^{and} in the first draft reflects our conversations and materials I furnished Miss Small. I am satisfied myself with both final productions; that of the book and that of the affidavit and I have made whatever changes I felt necessary in both. I am therefore happy to lend my name to both book and affidavit.

12. I have been informed by persons conversant with the publishing industry that the idea of using free-lance writers to prepare initial drafts of textbooks is not new. It is commonplace in the writing of textbooks for elementary and high schools. It is of increasing importance in the writing of textbooks for the college market. This is demonstrated by the fact of which I have been informed that the principal free-lance writer for my book, Mr. Lawrence Locke, testified at his deposition that he did such work not only for Appleton but for a number of other leading American publishers. Such a method allows both readability, a critical factor as the reading ability of undergraduates decreases, and speed of writing; which contrasts with

the more traditional method which frequently takes so long that the first few chapters are out of date by the time the final chapters are written a few years later.

13. Under the supervision of my attorneys, I am preparing a detailed analysis of defendants' purported parallels. This job is not finished and I have been delayed by the assignments given me by defendants' counsel at my deposition (which were subsequently ignored at my later deposition) and my work in opposing this motion for a preliminary injunction. However, my initial analysis establishes that in general the so-called purported parallels are nothing more than the rendering of the same basic facts about the discipline covered by both books. Of course, any two books on child psychology must be somewhat similar as they both cover the same discipline. This is particularly true of textbooks which are aimed at the same market - professors who are, of course, most interested in how any particular textbook covers their curriculum for their course. Much of the material supposed to be copied from M-C-K appears in a number of other textbooks on the subject. At the argument of this motion, my attorney will hand up a number of other competing works so that this court can satisfy itself as to this fact.

14. As a general rule, the material alleged to be copied is the most well-established, fundamental and indisputable. It is, in a phrase, the conventional wisdom of the subject. The books contrast on the more theoretical points. Frequently defendants' purported parallels ignore what is being said. If they did not, they would find that my book frequently presents different material about

the subject than M-C-K, demonstrating that my book is not a copy of M-C-K but rather an amalgam of various sources, some of which are covered in M-C-K and some of which are not. Thus for example, parallels 3 and 4 try to find some parallels between my discussion of the philosophy of John Locke and Jean Jacques Rousseau and the discussion of those philosophers in M-C-K. Ignored in this chart of parallels is the fact that my book discusses David Hume and Immanuel Kant in the same passages while these two philosophers are totally ignored in M-C-K. Moreover, the M-C-K discussion of Locke and Rousseau seems to be included for some vague historical background. In contrast on page 3 of my book I go on to demonstrate in detail how certain contemporary schools of child psychology now embrace either the viewpoint of Locke and Hume or that of Rousseau and Kant, an idea only barely hinted at on page 23 of M-C-K.

15. At the depositions, defendants have emphasized purported similarities between the treatment of problem solving in both books, purported parallels 82 through 92. A preliminary analysis indicates that there are approximately 600 lines in my book corresponding to purported parallels 82 through 90. 31 lines express ideas found only in my book and the Kogan and Kagan article on which the relevant portions of M-C-K appear to be based. 163 lines set forth ideas to be found in my book, M-C-K, and the Kogan and Kagan article. 165 lines express ideas found in my book and M-C-K. Expressed in 165 lines are ideas unique to my book, a fact frequently hidden by careful editing of the parallels. (Roughly 75 lines do not fit this classification scheme.) Here the similarities between the two works are heightened by the fact that the theory set forth is that of Professor Kagan, one of the co-authors

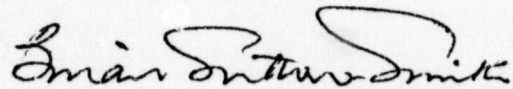
Affidavit of Brian Sutton-Smith in Opposition to Motion 121a
of M-C-K. The ideas of Professor Kagan both in his article and in his textbook are repeated but that does not mean that my book copies his means of expression.

16. There is a similar explanation for purported parallel 41 which was frequently discussed at depositions. My book reports on an experiment of Professor Kagan which was unpublished at the time M-C-K was published. I understand that M-C-K's copyright does not protect the experimental finding that Dr. Kagan observed and reported in M-C-K. It only protects his expression of them. In this connection, it should be noted that there are virtually no claims of the use of identical language in any of the purported parallels. Where there is similarity of phrasing, it is the product of the accurate reporting of the idea expressed. In such cases, accuracy of reporting requires precision of language and hence a commonness of words.

17. At my deposition, and I had been informed at the deposition of Julie Small, defendants continually emphasized a few points where I commented on possible closeness between a passage in a draft of my book and that of M-C-K. While defendants try to invest this with a sinister tone, these incidents demonstrate my good faith. I made these comments in order to avoid any possible plagiarism.

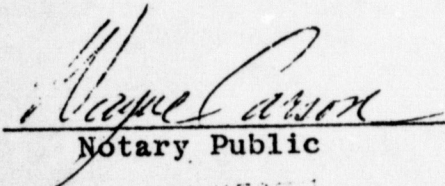
18. What I have said demonstrates the originality of my book. Perhaps the best proof of the originality of my book is its success. Numbers of child psychology professors throughout the country have adopted it for their courses not because it is a warmed over rehash of someone else's work but because it has a coverage, a perspective and a readability that its competitors lack. As I indicated, I am still in

Affidavit of Brian Sutton-Smith In Opposition to Motion 122a
the process of careful analysis of the purported parallels. This
detailed study which I hope to have ready shortly will dissipate
defendants' claims and with it the cloud that defendants are trying
to place upon my reputation, unfortunately not only in this court but
among my professional colleagues as well.



BRIAN SUTTON-SMITH

Sworn to before me this
20th day of May, 1974.


Notary Public

NOTARY PUBLIC
COMM. EXPIRES MAY 1976

EXHIBITS ANNEXED TO AFFIDAVIT OF BRIAN SUTTON-SMITH

EXHIBIT A - RESUME

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Teachers College, Columbia University

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Reviews

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The Development of Sex Differences by E. Maccoby (ed.). Nature, 1967, (June 24).

Twins and Twin Relations by Helen Koch. Contemporary Psychology, 1968, 13, 231-232.

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The Effects of Sociodramatic Play on Disadvantaged Preschool Children. The Record, 1970, 71, 529-531.

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- Birth Order and Life Roles, by Lucille K. Forer. Contemporary Psychology, 1971, 16, 42-44.
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- Empathy and Birth Order by Ezra Stotland, et al. Contemporary Psychology, April, 1973, 18, p. 169.
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V. Republications

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- The Measurement of Masculinity and Femininity in Children: An Extension and Revalidation. In R & M Smarts (eds.), Child Development and Relationship. New York: Macmillan, 1966.
- Child Training and Game Involvement. Bobbs-Merrill Series in Social Science, 1966.
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- The Role of Play in Cognitive Development. In W.W. Hartup & M.L. Smothergill (eds.), Young Children: Reviews of Research. Washington, D.C.: N.E.A., 1968. Also in Johnson & Bredinnus (eds.), Readings in Child & Adolescent Psychology.
- Child Training and Game Involvement. In J. Loy and G. Kenyon (eds.), Sport, Culture, and Society, New York: Macmillan, 1969.
- Sibling Associations and Role Involvement. In R.E. Grinder, Studies in Adolescence. New York: Macmillan, 1969.
- Development of Sex Differences in Play Choices During Preadolescence. In A.H. Sage, (ed.), Sport and American Society.
- Sibling Associations and Role Involvement. In E. Hopson & J. Haynes, The Theory and Practice of Vocational Guidance. London: Pergamon Press, 1969.
- Game Involvement in Adults. In W.P. Morgan (ed.), Contemporary Readings in Sports and Psychology. New York: C.C. Thomas, 1970.

Father Absence Effects in Families of Different Sibling Composition, AND The Effect of Limited Father-Absence on Cognitive Development, BOTH IN J. Rosenblith, et al. The Causes of Behavior: Readings in Educational Psychology; also Helen Bee, Social Issues in Developmental Psychology; and also in Irving Sigel's Controversies in Developmental Psychology.

Sibling Consensus on Power Tactics. In F. Rebelsky & L. Dorman (eds.), Child Behavior and Development. New York: Knopf, 1970.

A Revised Conception of Masculine-Feminine Differences in Play Activities: In Smart & Smart (eds.), Children: Development & Relationship. New York: Macmillan, 1972.

Role Replication and Reversal in Play. In Seidman, J.M. The Child: A book of Readings. New York: Holt, Rinehart & Winston.

Game Involvement in Adults. In Igor Kuayszyn. Selected Academic Readings. Simon & Schuster, 1973. Also in M. Truzzi, Anthropology of American Life, Prentice-Hall.

Strategy in Games and Folktales. In Pierre Maranda. Mythology. Penguin Books.

Sibling Age Spacing Effects Upon Cognition. In David Heise. Personality Development: The Social Origins of Individuality. Rand McNally.

Family Interaction Effects on Masculinity-Femininity. In H.M. Mischel, Readings in Personality. Holt, Rinehart & Winston, 1973.

The kissing games of adolescents in Ohio. In R.E. Grinde, Readings in Adolescent Psychology.

BRIAN SUTTON-SMITH

June, 1973

Born: New Zealand, July 15, 1924
Citizenship: U.S.A., 1962

Marital Status: Married,
five children.

BRIEF BIOGRAPHICAL SKETCH

Brian Sutton-Smith was born in New Zealand and received his Ph.D. in 1954 from the University of New Zealand. He first came to the United States as a Fulbright Scholar in 1952, and studied at the Universities of California (Berkeley), Chicago and Wayne State. He is a United States citizen and head of the Program in Developmental Psychology, Teachers College, Columbia University, since 1967.

His books include several children's novels published in New Zealand (Our Street, Read, 1960; Smitty Does a Bunk, Price-Milburn, 1959); several books on children's play and games:

Play With Your Children, in press, Hawthorne Books (1974)
The Games of New Zealand Children, U. of California Press, 1959.
The Folk Games of Children, U. of Texas Press, 1972;

two textbooks and book of readings in developmental psychology:

Child Psychology, Appleton Century Crofts, 1973
Readings in Child Psychology, Appleton Century Crofts, 1973
Developmental Psychology, Appleton Century Crofts, in press (1974);

several co-authored books on play and games:

Childs Play, John Wiley & Sons, 1971 (with R.E. Herron)
The Study of Games, John Wiley, 1971 (with E. Avedon);

several co-authored books on other topics in developmental psychology:

The Sibling, Holt Rinehart & Winston, 1970 (with B.G. Rosenberg)
Sex & Identity, Holt Rinehart & Winston, 1972 (with B.G. Rosenberg)

As his books indicate, his major research interests are in child social development and development through play and games. He has over 100 scholarly articles in these areas. Current research includes the structural-analysis of play, the analysis of game playing in school playgrounds, and the analysis of family structural effects on sex role development. Other research interests include the general range of children's spontaneous yet systematic behaviors, "the psychology of childlore". In addition, his current training program at Teachers College emphasizes the creation of a developmental psychology of the arts, that is, the development of scholarly information and research related to the way in which children develop their imaginative lives not only through play, games and childlore, but through the various artists' media. He considers these areas to be formative in the development of the human imagination.

I. Education

Ph.D. University of New Zealand, 1954; Developmental Psychology.
Teacher Certificate, Class A, Dept. of Education, Wellington, New Zealand, 1952
Diploma of Education, Victoria University College, 1952
M.A. Victoria University of Wellington, 1948; Educational Psychology major
B.A. Victoria University, 1947; Educational Psychology major.

II. Work History

1967-present:	Professor of Psychology and Education and Program Head in Developmental Psychology, Psychology Dept., Teachers College, Columbia University
1956-1966:	Professor, Psychology Department, Bowling Green University
1964-1965:	Director of Undergraduate Psychological Studies, Bowling Green University
1963-1964:	Visiting Associate Professor, Institute of Human Development, Clark University, Worcester, Mass.
1955:	Sessional Lecturer in Educational Psychology, Victoria University College
1955-1956:	Elementary School Teacher, New Zealand
1954:	Research Associate, Wayne State University
1953:	Smith Mundt Research Fellow, University of California
1947-1948:	Graduate Assistant, Victoria University College, Wellington, New Zealand.

III. Membership in Professional or Scholarly Societies

APA, Division 7, Developmental Psychology; Fellow, 1967. Member divisions: 8, 24, 26.

American Folklore Society

American Association for the Advancement of Science. Fellow, 1970.

Eastern Psychological Association

Society for Research in Child Development

A.A.U.P. Secretary, 1960-61; Vice-President, 1961-62; President, 1962-63.
(Bowling Green State University Chapter)

IV. Special Awards or Honors

Citation from American Academy of Physical Education "for outstanding contributions to the study of the child's social development and the meaning of play" (April 12, 1973).

Recipient 2 year research grant National Institute of Education for the study of "the enculturation of the imaginative processes between the ages of five and seven years".

Director, Cognitive and Social Assessment for Mauritius (W.H.O.) Project, National Association for Mental Health, 1972-73.

Co-director with B.G. Rosenberg, N.I.M.H. (1. Rol HO 06792-1) Sibling Associations, Personality Styles and Fertility Rates, 1972-1975.

Director, Training Grant in Developmental Psychology, N.I.M.H., 1. Tol. MH-11624-01A, 1969-73.

Co-director, O.E. 2-9-420032-1021-(010). Assessment of Role Induction and Role Involvement in Creative Drama, 1969.

Director, Research Grant, MH-15786-01,02, 1968-71, Sibling Associations and Interactive Response Sets.

Co-director with B.G. Rosenberg, B.G.S.U.: MH-07354, U.S. Public Health, 1962-63 (Ordinal Position). MH-07794-01, U.S. Public Health, 1963-64 (Sibling Associations and Interactive Response Sets).

Grant B.G.S.U., NSF Fund. Strategic Competence & the Logical Analysis Device.

Consultant to John M. Roberts, Research Grant M-4161, 1960-62, and MH-04161-03 (BS), Comparative Study of Codes and Models 1962-63.

Grant from American Philosophical Society and Penrose Fund, 1960. Children's Games in Human Development.

Research Grants from Bowling Green State University Scholarly Advancement Committee in 1958, 1959, 1960, 1961, and 1962.

Research Associate, Grant M-550, U.S. Public Health. Behavior Settings & Child Behavior, 1953-54, Wayne U., Detroit, Mich., with P.V.Gump, Prin. Inv.

Research Fellow, Family Study Center, University of Chicago, 1953.

Smith-Mundt Fellow, Institute of Child Welfare, Berkeley, California, 1952-53.

Fulbright Research Fellow, 1952-54.

Post-Graduate Scholarship, University of New Zealand, 1945-50.

Rhodes Scholarship Nominee, Victoria University College, 1947.

James Mackintosh Scholarship, Victoria University College, 1946.

Habens Prize, Victoria University College, 1946.

Senior Scholarship (undergraduate) Victoria University College, 1946.

V. Professional Activities

Consultant Horace Mann Lincoln Institute to CBS Captain Kangaroo Program (1972-73).

Consultant Redbook magazine and the Toy Manufacturers Association (1973)

Consultant Sports Illustrated (1973)

Associate Editor Psychiatry - a journal of interpersonal processes (1973-)

Consultant, Maumme Valley Country Day School, 1965-67, Riverdale Country Day School, 1969-70.

Psychology Editor, Journal of American Folklore Abstracts, 1965-67.

Head-Start Consultant, Bowling Green State University, 1966.

Organizer, Regional Meeting of Society for Research in Child Development at Bowling Green State University, March, 1966.

Consultant, Personality (An International Journal), 1969-70.

Field Assessment Officer, Peace Corps, 1969-70.

Consultant, Tri-University Project, Humanities in Education, University of Nebraska, 1967-69.

Occasional Article Consultant for Merrill-Palmer Quarterly, Journal of Personality and Social Psychology, Psychological Bulletin, Developmental Psychology, Child Development, Journal of Experimental Child Psychology.

Psychology of Art Consultant, Council of Churches, Riverside, 1969-70.

Consultant, N.Y.U. TTT early childhood training project, 1970-73.

Consultant, Curriculum Development Incorp. (Day Care Training Programs), 1971.

Consultant, Title 3. Block School Project for Preschool Education, Brooklyn, 1971.

Commission Chairman, Research and Evaluation, Recreation Division, American Association for Health, Physical Education & Recreation, 1971-72.

Consultant with Horace Mann Lincoln Institute to CBS Captain Kangaroo Program 1972-73.

Consultant to Community School, Aspen, Colorado, January, 1972.

Consultant to Psychological Corporation. Evaluation of affective and expressive behaviors in Brooklyn Block School, 1971-72.

Consultant, N.A.E.Y.C. in preparation of films on play, 1972.

VI. Addresses

British Association for the Advancement of Science. Section H: Anthropology, Belfast, Ireland, July, 1952. ("Traditional Games of New Zealand Children").

Western Folklore Society, Berkeley, California, May, 1953. ("Games Rhymes of New Zealand Children").

American Psychological Association, New York, August, 1954 ("Activity Settings and Social Interaction").

Midwestern Psychological Association, Chicago, May, 1958 ("Masculine-Feminine Changes in Play Preferences").

Central States Anthropological Association, Bloomington, Indiana, April, 1960. ("Sixty Years of Change in Game Preferences").

Midwestern Psychological Association, St. Louis, May, 1960. ("Opposite Sex Scales as a Measure of Psychosexual Deviancy").

Society for Research in Child Development, University Park, Pa., March, 1961. ("Sex Role Changes in Play Preferences").

Midwestern Psychological Association, Chicago, May, 1961. ("Age and Sex Changes in Anxiety").

- Michigan Historical Society, Detroit, October, 1961. ("Historical Changes in Children's Games").
- Midwestern Psychological Association, Chicago, May 1962. (a. Ordinal Position and Sex-Role Identification; b. "Group Administration of Bender-Gestalt").
- Society for Research in Child Development, Berkeley, Cal., March, 1963. Paper presented in Symposium on Sex-Role Development.
- Eastern Psychological Association, Philadelphia, April, 1964. ("Achievement and Strategic Competence").
- American Psychological Association, New York, Sept., 1966. (a. "Development and Learning: A Reply to Baer - A Symposium," b. "A Factor Analysis of Power Styles in the Family").
- Michigan State University, Colloquium, Dec., 1965. ("Games and Power").
- Orthopsychiatric Association, Chicago, Sept. 1965. ("Sibling Perceptions of Power Styles Within the Family").
- Texas Psychological Association, San Antonio, Dec., 1966. (a. "Game Theory and Cognition in Childhood"; b. "Philosophical Issues in Contemporary Psychology - Symposium").
- Massey University, New Zealand, March, 1967. Symposium on Piaget. (Criticism of Piagetian Play Theory).
- University of Illinois, International Congress on Sociology of Sport, April, 1967. ("The Cross-Cultural Appearance of Games").
- Society for Research in Child Development, New York, March, 1967. ("Family Interaction Effects on Masculinity-Femininity").
- Teachers College, Columbia University, April, 1967. ("Why Children Play").
- Midwestern Psychological Association, May, 1967. ("The Effects of Limited Father Absence of the Cognitive and Emotional Development of Children").
- American Folklore Society, Toronto, Nov., 1967. ("The Psychology of Children").
- The Society for Research in Child Development. Clark University, March, 1968. ("Daydreams, Play and Games").
- Eastern Psychological Association, Philadelphia, April, 1968. ("Sibling Perception of Parents").

American Orthopsychiatric Association, Chicago, March, 1968. Co-chairman, Workshop on Games.

Sociology of Sport Symposium. University of Wisconsin, Madison, May, 1968. ("Two Cultures of Games").

University of Minnesota, Symposium on Child Development, May, 1968. ("Modeling and Reaction in Sibling Development").

American Psychological Association meetings. San Francisco, 1968. Symposium: "Ordinal position, Personality, and Social Interaction in the Family", with E.E. Maccoby, E.E. Sampson, I. Hilton, E. Statland and G. Leventhal).

American Association for the Advancement of Science. Dallas, Dec., 1968. ("Psychology of Sport").

American Association for Health and Physical Recreation. Boston, 1969 ("Testing and Contesting").

Society for Research in Child Development, Santa Monica, Cal., March, 1969 ("Sibling Age Spacing Effects on Cognition").

Society for Research in Child Development, Santa Monica, Cal., March 1969 ("Comparative Studies of Parent-Offspring Relationships").

American Psychological Association, Sept., 1969, Washington, D.C. ("Age Spacing Effect on Cognition in Children").

American Psychological Association, Sept., 1969, Washington, D.C. (Symposium on Sex Differences).

International Workshop on the Sociology of Sport. Switzerland, Sept., 1969 ("The Sporting Balance").

Tri-University Project, Lincoln, Neb., Oct., 1969 ("Childlore").

Early Childhood Symposium, Little Rock, May 1970 ("Structure in Play and Games").

Early Childhood TTT Conference, St. Louis, June 1970 ("Teaching Children to Play").

American Psychological Association, Miami, Sept., 1970, Discussant. ("Learning Difficulties in Adolescence").

American Educational Theatre Conference. Washington, August, 1970. ("Psychology and Drama").

- Colloquium, Bank Street School (Play and the Arts) April, 1971.
- National Association for the Education of Young Children, Play Conference, Feb., 1971 ("The Four Playful Modes of Knowing").
- Colloquium: University of Pittsburgh, Psychology Dept., Feb., 1971, ("The Four Playful Modes of Knowing").
- American Association for Health, Physical Education and Recreation, April, 1971 Detroit ("Play and the Arts in Early Childhood Development").
- Society for Research in Child Development, Minneapolis, March, 1971 ("Do Siblings Really Count -- A Longitudinal Analysis").
- Games and Simulations Conference, Bucknell University, May, 1971. ("Developmental Change Through Playing Games").
- Early Childhood Conference. University of Rochester at Brockport, May, 1971 ("Children's Play").
- Second World Conference in History of Sport, June, 1971 Banff, Canada ("A Developmental Approach to Play Games and Sports").
- Third International Symposium on the Sociology of Sport. Waterloo, Canada, August, 1971 ("The Game in Sport", Symposium discussant).
- American Psychological Association, Washington, D.C., Sept., 1971 ("Age Differences in Dramatic Improvisation").
- American Anthropological Association, New York, Nov., 1971 ("A Cognitive Approach to Children's Riddles").
- Early Childhood Association of Cleveland, Feb., 1972 ("Children's Play").
- Psychology Colloquium, Temple University, Feb., 1972 ("Games").
- Triple T Early Childhood Education Project, Oakland University, Rochester, Mich., March, 1972 ("Expressive Activities in Early Childhood").
- Institute of Human Development, Psychology Colloquium, University of Chicago, April, 1972 ("Play and Games").
- Sarah Lawrence Conference on Play Therapy, April, 1972 (Development Through Play).
- Eastern Psychological Association, Boston, April, 1972 ("Sex Differences in Play and Power").

New York State Early Childhood Association, Rochester, May, 1972
("Play and Improvisation"). Also Colloquium, Triple T Project,
Univ. of Rochester.

World Conference on Children and Youth Theatre. Albany, June, 1972
("The Sensible and Intelligible Parameters of Improvisation").

World Olympiad Sports Congress, Munich, August, 1972 ("Theory and
Research in Play; and Conflict in Games").

American Anthropological Association, Toronto, Nov., 1972 ("Inver-
sion in Games").

Conference on Play and Exploration, Georgia State University, Jan., 1973
("Play as Adaptive Potentiation").

Nebraska Symposium on Motivation, Lincoln, March, 1973 ("Sex Differences
in Power").

Psychology Colloquium, University of Minnesota, April, 1973 ("Scaling
Play and Improvisation").

Society for Research in Child Development, Philadelphia, April 1973
("A Developmental-structural Approach to Riddles" and "A Longitud-
inal Study of Sex Differences").

Psychology Colloquia at the Universities of Yale (Feb. 1973); University
of Victoria, Vancouver (Feb., 1973).

Addresses Scheduled

World Conference on Children's Games, Bucharest, Sept. 1973.

5th British Commonwealth and International Conference on H.P.R.&E.,
New Zealand, January 1974.

EXHIBIT B - AUTHOR'S NOTES

Emphasis is on the constructivist philosophical stance, the ix pluralism (with varied theories : learning, Piaget, psychoanalysis and Erikson Werner and to a mild degree phenomenology. The two imply a concern with inter actionism (or theoretical predictions, and of variables)

Constructionism - is the mutual interdependency of assumptions, models, theory, method and data focus. It is enunciated in my 1966 article on p259 in the conclusion. It is on page 1 of the textbook ~~xxxx~~ synopsis (see also p 8 for method) ; It is indicated by the class notes for 1968 and will be found also in the Book of Readings p 22.

Pluralism is indicated on page 1 of the 1966 article. It is an anti uni-dimensional viewpoint. What aspect of a problem is explained by a particular theoretical viewpoint. Every theory is right in some respect; but in which respect. See my class notes as examples

Interactionism is implied by pluralism. All the theories and the variables on which they focus contribute to our knowledge of development. They all contribute to the variance . See the statement in text on probability p438. In addition the view implies in looking at variables, we would look for systems of interaction between them. There is through this book a constant attempt to see mechanism and structuralism (usually learning & Piaget) as making different contributions to the same problem. The best illustration is probably the section on social cognition and role taking in p392 or the emphasis on mutual regulation mother and child chap 7.

Within pluralism there are the theories. There is an attempt to do justice to but be skeptical about learning theory. Piaget is given a large place theoretically in this book. Werner is given attention philosophically, and for his contributions to language, representation and perception. He derives from Cassirer also mentioned ; and both contribute to the authors concern for aesthetics and voluntary behavior in general , play, games etc. Erikson plays a key role throughout

The authors additional interests in social development, sex role development, siblings and cross cultural materials are evident.

Note age division is after Piaget

Chapter sub divisions within age sections are after Erikson (see organization

Phenomenology. See Notes (Self-awareness etc)

Chapter One

The emphasis is heavily constructivist and pluralist

144a

- p 3 --L "our naive beliefs
- p 4--L --we must make explicit these assumptions
- p5 --l --there is no such thing as children
- p6 environmentalism p 7 empiricism
- p8-9 models theories
- p.10 Werner -the concept of development as positive direction
- p.11 Werner and aesthetics. Cassirer and aesthetics
- p. 14 comparison of theories --most important page --all talking diff languages
- p. 15 diff theories dictate diff methods ; model affects method
note pros and cons of diff methods in following pages
- p 20 models again. see last paragraph summary
- p. 21 --our interest in ourselves (phenomenological piece)
- p 22 summing on present state of theory

Chapter 2

145a

Chapter occupied with pros and cons of learning theory & The focus of each micro learning theory is discussed; emphasis is on the relativity of data to theory. Special novel emphasis is given to cognitive theory and to development as against learning. In the Readings part 5 p 176 the same focus is stressed in ~~intere~~ introducing Gagne. A flavor of commonsense is brought to some of the discussion

- p 27 again the emphasis on perspectives; learning theory as a perspective
- p 30 for learning against maturation
- p 31 skepticism about conditioning
- p 32 top left, summing up on conditioning, evidence for both interps
- p 32 consideration of both kinds operant and conditioning
- p 35 skepticism on programmed learning, pro operant, skepticism on labels stimulus and response
- p43 plus Piaget, the need to know
- p 45 Piaget's quite diff't orientation
- p 47 Piaget radically different
- p 49 pluralism again (second to last paragrapg)
- p 49 development precedes learning

L

In this area, the success of interactionism as a notion has been well established and the materials demonstrate this. There is special emphasis here on sex differences as an illustration of interactionism

p. 57 -the debate heredity v environment (which H which E)

p 75 statement of interactionism for sex differences (last para)

Chapter 4 Prenatal

Interactionism here is the environment organism relationships
Emphasis is again anti uni dimensional interpretations. Our special
contribution is the hormone section p. 95

p 83 pr natal events exercise influence
p. 89 difficulty in showing these effects

Emphasis here is on maturation and stimulation as interactors

- 113 newer notions of baby
- 114 mat v stimulation
- 115 Piaget's particular reflexes
- 133 summary of Dennis on stimulation

Chapter 6 Mental Cognitive & Language

Babies function at a higher level p 144
language is a creative process, baby invents 148
cognition precedes language p 149 Bloom etc
Werner and Kaplan's precursors of language p. 156
The Piagetian map 163
Voluntary behavior 170
Play and cognition p 175 on potential repertoires

Interactionism as mutual regulation mother and child

p 183 definition

p 184 the role of theory, the uni directional parent criticised, synchrony

p 185 interaction in sex linked variables --mutual regulation

p 187 some commonsense about interpreting theory

p189 relativity of professional viewpoints (constructionism again)

p190 th uni directional feeding parent --to be examined

p 192 visual interaction as mutual regulation

p 193 uni directional view modified

p 194 critique of over simple social learning approaches

p 198 a statement on interactionism --as multi dimensional

p 200 more on mutual regulation

p208 more on mutual regulation --socialization as agreement

p 210 no one training method

p 211 multi dimensionality in cross cultural materials

p 211 prediction of behavior, critique of older views

- Piaget decision from Piaget
- Piaget on intelligence p 227
- 228 Cognition prior
- 229 Representation after Werner and Kaplan, role of metaphor
- 230 metaphor and art
- 231-32 representation in play
- 235 --pluralism in theories of language
- 237 --Bloom and Werner and Kaplan
- ~~238~~ 241 -- words coded to cognition
- 242 --the issue again
- 243 Piaget et al say cognition first (but alternative example)
- 246 --deficit v deficiency theory (cross-cultural)
- 247-249 --economics not race

256 Mutual regulation notion again --this time to structure organization
of chapter
256 siblings
257 relativity of method
258 method relativity
260 mutual regulation
260 pluralistic account of identification (earlier of learning)
261 Werner and Cognition 262 social learning
264 method problems
266 sex and mutuality
267 conscience --a pluralistic account
269 evidence for both sl and cog viewpoints
269 aggression a pluralistic account
278 summed as pluralism
~~sex~~
278 sex typing as internal
280
281 cognitive v sl
283 pluralism in sex typing again
284 social change
284 cross cultural
284 conscience --as internal regulator
285 anecdote from park
289 pluralism of interpretation again
290 summing up alternative explanations

299 Piaget age again
201 The argument global v analytic on the cognitive shift
306 The conflict of viewpoints
315 Summing the global v analytic also 314
315-316 Art
317 global v analytic again
318 analytic global in perception
319 ditto
320 art and also pluralism
321 interpersonal perception (forerunner of later social cognition)
322 global v analytic argument again
324 again
330 cross cultural and deficit again

- 338 my period of rule research
338 Social cognition and social structure
340 structuralism in social development
also cognition v social learning
342 power and games and play
344 the contrasting social learning viewpoint
349 nursery research --my own
354 emotional dev -psychoanalytic v cognitive notions
~~355xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~
356 games as emotional structures
357 more usual trait approach
360 structural approach or cognitive approach to defense mechanisms
363 -constructivist approach to behavior problems
369 summing the last alternatives sl or cognitive , more sl this chapter
more cognitive last chapter

Social Cognition is key to this chapter

379 Piaget the relationship cog and social

380 Werner

382 cog and social & werner

383 humor as cognitive structural

385 critique of Piaget

386 Rothman pluralistic study

387 nice summing of sl v cognitive

389 attempt to reconcile perspectives role taking and sl

390 pluralism

391 sl

392 the pluralism of interp again

394 defense mechanisms considered cognitively

399 games

400 forced role taking

408 summin of chain of arygument

Freud- Erikson and ego master

414 interactionn of this point and cognitive perspectives

416 phenomenological

418~~xxxxxxx~~index

419 sex role development --alternative inte:ps

420 pluralism about moral development

421 social variables as compared with cognitive in last chapter

426 siblings

428 games

437 economics not race

438 pluralism as probability

- 450 psychoanalytic crisis v non crisis veiws Erikson
- 451 crisis material based on the atypical
- 458 Piaget
- 461 Phenomenology
- 466 Piaget's operations as basis for vocation, politics

479 Freudian theory -erikson
480 Erikson
481 social learning v Freudian
482 cross -cultural
483 adolescent values in terms of various theories
486 self concept in terms of various theories
467 research consequences
497 maturity

AFFIDAVIT OF JAMES H. CLARK IN SUPPORT OF MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

159a

-----x
MEREDITH CORPORATION,
an Iowa corporation

Plaintiff,

-against-

HARPER & ROW, PUBLISHERS, INC.,
PAUL HENRY MUSSEN, JOHN JANEWAY
CONGER and JEROME KAGAN

Defendants,

BRIAN SUTTON-SMITH, and individual,
and PRENTICE-HALL, INC., a Delaware
corporation

Additional Defendants
on Counterclaims

:
: Civil Action No.
: 73 Civ. 5446 (RO)
:
: AFFIDAVIT IN
: SUPPORT OF MOTION
: FOR PRELIMINARY
: INJUNCTION AND
: FOR OTHER RELIEF

-----x
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JAMES H. CLARK, being duly sworn, deposes and says:

1. I am, and since April, 1970 have been, the Vice President and Publisher of the College Department of the defendant Harper & Row, Publishers, Inc. ("Harper & Row") and make this affidavit in support of defendants' motion for a preliminary injunction and other relief.

2. For six months prior to joining Harper & Row, I was Associate Publisher of Aldine Publishing Co., a publisher of academic books. From February, 1960 to January, 1969, I was employed by Prentice-Hall, Inc., first as a college traveler,

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Affidavit of James H. Clark In Support of Motion
i.e., a college textbook salesman, and later as an editor of college books and head of Prentice-Hall's western editorial operation. Because of my 14 years of experience in marketing college textbooks, I believe I have become familiar with the college textbook market and with the market for and competition in child development textbooks in particular.

3. Ever since I joined Harper & Row in 1970, I have been responsible for marketing Child Development and Personality by Drs. Paul Mussen, John Conger and Jerome Kagan (hereinafter "MCK"). Attached hereto as Exhibits A, B and C are the Registration Certificates for MCK from the files of Harper & Row, filed in 1956, 1963 and 1969 for the first, second and third editions, respectively.

4. For many years, and until the spring of 1973, MCK had been Harper & Row's most profitable college textbook and most widely used child development college textbook in the United States, with approximately thirty percent of this market. Many other child development texts compete for this large market and, to my knowledge, no single text, including MCK, dominates this field in the way that, for example, Samuelson's Economics does in that field. Nor, so far as I know, is there a single predominant approach, philosophy or organization of the material in this field; indeed there is a wide divergence in the texts in the subjects selected, and their organization and approach.

Psychology under the purported authorship of Brian Sutton-Smith (the "Meredith Book") causing a precipitous drop in the sales of the third edition of MCK. As expected, sales of MCK have improved following the publication of the fourth edition in the Spring of this year. However, Harper & Row continues to suffer substantial damages from sales of the Meredith Book. * Despite changes in the fourth edition, the Meredith Book still bears a substantial similarity to it in content coverage and organization, causing many professors, who are inclined to the approach, organization and coverage they both follow, to select the Meredith Book over MCK. Moreover, because of the continuance of the two books' basic similarity, those familiar with MCK are susceptible to being persuaded to purchase the Meredith Book. In my opinion, if the sale of the Meredith Book is enjoined, Harper & Row will pick up at least 50%, if not a greater percentage, of the adoptions that the Meredith Book would otherwise have obtained.

6. The first year of sales of a new edition of a college text is crucial to the success of the edition over its entire life and the major marketing effort for a new edition occurs at that time. During that first year, adoptions (i.e., selection by college professors of their texts) obtained are likely to continue during the life of that edition. Obviously, the continued sales of the Meredith Book seriously threaten the effort to secure many such adoptions, thus resulting in permanent harm.

* Only preliminary and fragmentary sales information is available and it is far too early to make any judgment as to the success of MCK, 4th edition.

Prentice Hall has exacerbated the harm to MCK sales for the simple reason that Prentice-Hall has over four times as many college textbooks salesmen as Meredith had. * Prentice-Hall is, moreover, the largest publisher of college texts in the United States whose strong reputation and leading position in this field has enhanced and will continue to enhance sales of the Meredith Book. As a much smaller publisher of college texts with barely one-third the number of college representatives as Prentice-Hall, Harper & Row is necessarily at a competitive ** disadvantage.

8. As one would expect, the two traditional periods of the year when most college texts are actually sold are during the months of July and August for the fall classes and during December and January for the spring classes; of these two seasons the larger by far is the July and August period. In the current year, however, marking a departure from tradition, many college text publishers have been making an effort to secure and fill orders for sales during June and July, rather than July and August, the principal reason being an impending severe paper shortage. I have been specifically informed and believe that Prentice-Hall is one of the publishers who has advised or is currently advising college bookstores to place

* Harper & Row estimates that Prentice-Hall has approximately 150-155 salesmen presently selling the Meredith Book, and that Meredith's own sales force was between 30 and 40.

** Harper & Row's sales staff totals 56.

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Affidavit of James H. Clark in Support of Motion
their orders for all textbooks as soon as possible. In my
opinion, a far larger proportion of Prentice-Hall's fall sales
of all college texts including Child Psychology will be made
during June of this year than in prior years and far fewer
sales than usual will occur in August. While this is being
done to secure early sales of all textbooks and not for the pur-
pose of avoiding the effect of a court bar to sales of Meredith
Book, the practical effect of what is happening is that sales
will be made by Prentice-Hall in the days and weeks in the
immediate future which normally would have been made in late
June or in July or August.

9. There can be no question that continued sales of
the Sutton-Smith book for the fall college classes will seriously
and permanently damage future sales of the fourth edition of
MCK for another reason: the longer an adoption of any particular
book such as MCK has been lost, the more difficult it becomes
to persuade the faculty member to return to that book. Thus,
in this case, if the Meredith Book is permitted to be sold for
the fall 1974 classes, the faculty members who first selected
it for use in their 1973 fall classes will, therefore, have used
the Meredith Book for two years. It is obvious that any loyalty
or goodwill toward MCK could well be substantially diminished or
destroyed by such a period of time.

10. Serious inconveniences and even harm to students

and faculty members for fall classes will probably result if a determination on the continued sales of the Meredith Book is not made at this time and deferred until after a plenary trial. This inconvenience and harm will occur because, by the end of June or early July, most faculty members who select the Meredith Book will not be available at their college offices to be informed if further sales of the Meredith Book were to be enjoined in or after late June. Therefore, were an injunction against the Meredith Book to issue at the end of June or in early July, those bookstores ordering in June and July and expecting delivery in July and August might not be able to reach the faculty members in question to select a replacement. If this happens, students in those classes would not have their textbooks until well into the class year, given the two or so months needed to process textbook orders.

11. I have been informed of Meredith's plans to depose bookstore managers, child psychology professors and Harper & Row's college travelers throughout the United States. These plans, if carried out, would cause an enormous amount of disruption and genuine harm to Harper & Row. The ill feelings which could well be engendered among bookstore managers and professors, upon whose goodwill we depend, is a very real, though intangible danger to Harper & Row, but not to Meredith, which no longer publishes college textbooks. The planned depositions

Affidavit of James H. Clark In Support of Motion 165a
would also disrupt our sales efforts and be enormously expensive.

I have also been informed that the depositions would not be necessary if Harper & Row prevailed on the copyright claim. Therefore, I respectfully urge that the copyright matters be determined first, thereby avoiding what may well prove to be unnecessary damage and expense to Harper & Row.

12. Thus, while Meredith's deposition plans are particularly threatening to the sale of MCK by reason of the involvement of professors who actually teach child psychology courses, they also will hurt all of Harper & Row's sales by diverting its salesmen and annoying our customers. This, I believe, is unjustified and should not be permitted unless the Court deems it absolutely essential.

13. The Court should also know of other activities which also could well unfairly impede our sales of MCK. For example, reports have come to my attention from our college travelers that certain Prentice-Hall representatives have stated that Prentice-Hall has won this lawsuit and is now free to distribute the Meredith Book. One of the representatives reportedly added that Prentice-Hall is now filing suit against Harper & Row for damages. Another Prentice-Hall representative is reported to have informed potential purchasers of MCK that there was a pending lawsuit on the fourth edition of MCK which may prohibit its sale. Obviously, the longer this kind of misinformation persists, the more it could unfairly and adversely affect our sales.

Sworn to this 20th day of
May, 1974.

Nathan H. B. Clark
Nathan H. B. Clark
Notary Public for New York
No. 0206657
Qualified in New York County
Commission Expires April 13, 1976

James H. Clark
JAMES H. CLARK

EXHIBITS ANNEXED TO AFFIDAVIT OF JAMES H. CLARK

EXHIBIT A - REGISTRATION CERTIFICATE FOR 1956

FORM A

166a

Certificate of Registration of a Claim to Copyright in a published book manufactured in the United States of America

CLASS **A A** REGISTRATION NO. **231615**
DO NOT WRITE HERE

This Is To Certify that the statements set forth on this page have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Arthur E. Felt
Register of Copyrights
United States of America



1. Copyright Claimant(s) and Address(es):

Name **Harper & Brothers**Address **49 East 33rd Street, New York 16, New York**

Name

Address

2. Title: **CHILD DEVELOPMENT AND PERSONALITY by
Paul Henry Mussen and John Janeway Conger. Under the Editorship of Gardner Murphy.**

3. Authors:

Name **Paul Henry Mussen**Citizenship **USA**

(Name of country)

Domiciled in U. S. A. Yes ☒ No ☐ Address **95 W. Norwich, Columbus 1, Ohio**Name **John Janeway Conger**Citizenship **USA**

(Name of country)

Domiciled in U. S. A. Yes ☒ No ☐ Address **1195 South Honey Way, Denver 20, Colorado**Name **Gardner Murphy**Citizenship **USA**

(Name of country)

Domiciled in U. S. A. Yes ☒ No ☐ Address **Menninger Foundation, Topeka, Kansas**

4. Date and Place of Publication:

(a) Date of Publication:

April 11, 1956

(b) Place of Publication:

United States of America

5. Previous Publication:

(a) New matter in this version:

(b) United States edition of a work subject to the ad interim provisions of the Copyright Law:

Year date of first publication outside the United States. Claim to ad interim copyright registered.

Yes ☐No ☐

6. Deposit account:

Harper & Brothers

Exhibit A - Registration Certificate For 1956

167a

7. Send correspondence to:

Name Harper & Brothers

Address 49 East 33rd Street, New York 16, N. Y.

8. Send certificate to:

Name

Harper & Brothers

Address

49 East 33rd Street

(Number and street)

New York 16, New York

(City)

(Zone)

(State)

Information concerning copyright of a published book

manufactured in the United States

For purposes of registration, Class A, "Books," includes all copyrightable material not appropriately classified in one of the other classes enumerated in the Copyright Law. In addition to bound volumes, it includes, for example, pamphlets, leaflets, single sheets containing text, and material distributed in envelopes or other containers.

Copyright of literary material is secured by publication of the work with notice of copyright, on the title page or page immediately following, consisting of the word "Copyright," the abbreviation "Copr.," or the symbol © accompanied by the name of the copyright owner and the year date of publication. Example: © John Doe 1955.

The use of the symbol © with the name of the copyright owner and the year date may result in securing copyright in some countries outside the United States under the provisions of the Universal Copyright Convention, which protection might not be secured by use of either of the alternative forms of notice.

Except as to any new matter contained therein, there is no provision in the law for registration of claims to copyright in United States editions of works in the English language first published outside the United States and protected under Sec. 9(c) of Title 17, United States Code, by virtue of the Universal Copyright Convention. A claim to copyright in the work as first

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Publication without notice or with an inadequate notice results in the loss of the right to secure copyright, which, once lost, cannot be regained.

The date of publication is defined as "... the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed ...". The law does not provide for the registration of claims to copyright in material in Class A prior to publication. Therefore, application should not be filed for registration of a claim to copyright in any material in Class A until after publication has occurred.

Promptly after publication with notice of copyright, two complete copies of the best edition should be sent to the Register of Copyrights, Library of Congress, Washington 25, D. C. These may be mailed free of charge if delivered to the postmaster with such request. There should also be sent an application on Form A and the registration fee of \$4 which will require letter postage.

The first term of copyright is 28 years and is computed in the case of a published work from the date of publication. In the twenty-eighth year an application may be filed to renew the claim to copyright for a second term of 28 years.

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EXHIBIT B - REGISTRATION CERTIFICATE FOR 1963

Certificate

168a

Registration of a Claim to Copyright

in a published book manufactured in the United States of America

CLASS	REGISTRATION NO.
A A	609163
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This is To Certify that the statements set forth on this page have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Abraham L. Kaminstein
ABRAHAM L. KAMINSTEIN

Register of Copyrights
United States of America



1. Copyright Claimant(s) and Address(es):

Name Paul H. Mussen

Address University of California, Berkeley, California

Name John J. Conger, 4200 E. Ninth Ave., Denver 20, Colorado
Orton

Address Jerome Kagan, 322 ~~South~~ Dr., Yellow Springs, Colorado

2. Title: CHILD DEVELOPMENT AND PERSONALITY - Second Edition
(Title of book)

3. Authors:

Name Paul Henry Mussen Citizenship USA
(Legal name followed by pseudonym if latter appears on copies) (Name of country)

Domiciled in U. S. A. Yes ☒ No ☐ Address as above

Name John Janeway Conger Citizenship USA
(Legal name followed by pseudonym if latter appears on copies) (Name of country)

Domiciled in U. S. A. Yes ☒ No ☐ Address as above

Name Jerome Kagan Citizenship USA
(Legal name followed by pseudonym if latter appears on copies) (Name of country)

Domiciled in U. S. A. Yes ☒ No ☐ Address as above

4. Date of Publication of This Edition:

January 30, 1963

5. New Matter in This Version:

Changes, additions and revisions, new preface

6. U. S. Edition of Book in English First Manufactured and Published Abroad: If this is the U. S. edition of a book in English, and all or a substantial part of the English text of an

earlier foreign edition was manufactured and first published abroad, complete the following spaces.

Year date of first publication of foreign edition _____
(Year)

Was claim to ad interim copyright registered in the foreign edition?

Yes <input type="checkbox"/>	No <input type="checkbox"/>
Yes <input type="checkbox"/>	No <input type="checkbox"/>

If claim to ad interim copyright was *not* registered, is U. S. copyright in the foreign edition claimed by virtue of the Universal Copyright Convention?

Complete all applicable spaces on next page

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Copyright Department Exhibit B - Registration Certificate For 1963

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169a

Name
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print
Name and
address

Name
Address

Copyright Department
Harper & Row, Publishers, Incorporated
49 East 33rd Street
New York 16, N. Y.

(Number and street)

(City)

(Zone)

(State)

Information concerning copyright in books

When To Use Form A. Form A is appropriate for published books which have been manufactured in the United States.

What Is a "Book"? The term "books" covers not only material published in book form, but also pamphlets, leaflets, cards, and single pages containing text. Books include fiction, nonfiction, poetry, collections, directories, catalogs, and information in tabular form.

Unpublished Books. The law does not provide for registration of "book" material in unpublished form. Unpublished books are protected at common law against unauthorized use prior to publication.

Duration of Copyright. Statutory copyright in published books lasts for 28 years from the date of first publication, and may be renewed for a second 28-year term.

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Third: Register Your Copyright Claim. Promptly after publication, mail to the Register of Copyrights, Library of Con-

gress, Washington 25, D. C., two copies of the work as published with notice, an application on Form A, properly completed and notarized, and a fee of \$4.

The Copyright Notice. The copyright notice for books shall appear on the title page or verso thereof, and shall consist of three elements: the word "Copyright," or the abbreviation "Copr.," or the symbol ©, accompanied by the name of the copyright owner and the year date of publication. Example: © John Doe 1961. Use of the symbol © may result in securing copyright in countries which are members of the Universal Copyright Convention.

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(1) **Ad Interim Copyright.** Ad interim registration is necessary for protection in the United States unless copyright has

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FEB -8 1963

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EXHIBIT C - REGISTRATION CERTIFICATE FOR 1969
FORM A

170a

Page 3

Certificate

**Registration of a Claim to Copyright
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CLASS A	REGISTRATION NO. 352759
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This Is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

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Register of Copyrights
United States of America



1. Copyright Claimant(s) and Address(es):

Name Paul H. Mussen
Address University of California, Berkeley, California
Name John J. Conger; University of Colorado School of Medicine, Denver, Colorado
Name Jerome Kagan; Harvard University, Cambridge, Massachusetts

2. Title: CHILD DEVELOPMENT AND PERSONALITY, THIRD EDITION
(Title of book)

3. Authors:

Name Paul Henry Mussen (a.k.a. Paul H. Mussen) Citizenship USA
(Legal name followed by pseudonym if latter appears on copies) (Name of country)
Domiciled in U.S.A. Yes ☒ No ☐ Address see above
Name John Janeway Conger (a.k.a. John J. Conger) Citizenship USA
(Legal name followed by pseudonym if latter appears on copies) (Name of country)
Domiciled in U.S.A. Yes ☒ No ☐ Address see above
Name Jerome Kagan Citizenship USA
(Legal name followed by pseudonym if latter appears on copies) (Name of country)
Domiciled in U.S.A. Yes ☒ No ☐ Address see above

4. Date of Publication of This Edition:

March 24, 1969
(Month) (Day) (Year)

5. New Matter in This Version:

Additional text, revisions and changes.

6. Book in English Previously Manufactured and Published Abroad: If all or a substantial part of the text of this edition was previously manufactured and published abroad in the English language, complete the following spaces:

Date of first publication of foreign edition Was registration for the foreign edition made in the U.S. Copyright Office? Yes No

If your answer is "Yes," give registration number

Complete all applicable spaces on next page

EXAMINER <i>[Signature]</i>

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Exhibit C - Registration Certificate For 1969

171a

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Harper & Row, Publishers, Inc.
10 East 53rd Street
New York, N. Y. 10022

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Name
Address

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Harper & Row, Publishers, Inc.
10 East 53rd Street
New York, N. Y. 10022

(City) (State) (ZIP code)

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What Is a "Book"? The term "books" covers not only material published in book form, but also pamphlets, leaflets, cards, and other pages containing text. Books include fiction, nonfiction, directories, catalogs, and information in tabular form.

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First: Produce Copies With Copyright Notice. Produce the work in copies by printing or other means of reproduction. To secure copyright, it is essential that the copies bear a copyright notice in the required form and position, as explained below.

Second: Publish the Work With Copyright Notice. The copyright law defines the "date of publication" as "... the earliest date when copies of the first authorized edition were placed on sale, or publicly distributed by the proprietor of the copyright or by his authority."

Third: Register Your Copyrights Claim. Promptly after publication, mail to the Register of Copyrights, Library of Congress,

Washington, D.C. 20540, two copies of the work as published with notice, an application on Form A, properly completed and notarized, and a fee of \$6.

The Copyright Notice. The copyright notice for books shall appear on the title page or verso thereof and shall consist of three elements: the word "Copyright," or the abbreviation "Copr.," or the symbol ©, accompanied by the name of the copyright owner and the year date of publication. Example: © John Doe 1970. Use of the symbol © may result in securing copyright in countries which are members of the Universal Copyright Convention.

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Orange Valley, Mass.

Haddon Craftsmen, Inc.

Books manufactured abroad • Scranton, Pa.

General. Form A is not appropriate for books which have been manufactured outside the United States.

Foreign-Language Books. Applications covering foreign-language books by foreign authors, manufactured abroad, should be submitted on Form A-B Foreign.

English-Language Books. Books in English manufactured abroad may be registered for "ad interim" copyright (Form A-B Ad Interim); or, if they are protected under the Universal Copyright Convention they are eligible for full-term registration on Form A Foreign.

1) Ad Interim Copyright. Ad interim registration is necessary for protection in the United States unless copyright has been secured

under the Universal Copyright Convention. To secure ad interim copyright a claim must be registered within 6 months of first publication abroad. Ad interim copyright lasts for 5 years or until an American edition is published within the 5-year period and registered.

(2) Universal Copyright Convention. An English-language work by a foreign author first published abroad is eligible for full-term U.S. copyright if: (a) its author is a citizen or subject of a country which is a member of the Universal Copyright Convention, or the work was first published in such country, and (b) all published copies bear the copyright notice provided under the Universal Copyright Convention.

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Application and affidavit received

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AFFIDAVIT OF JEROME KAGAN IN SUPPORT OF MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

172a

-----X

MEREDITH CORPORATION,	:	
an Iowa corporation,	:	
	:	
Plaintiff,	:	Civil Action No.
	:	73 CIV 5446 (RO)
-against-	:	
	:	
HARPER & ROW, PUBLISHERS, INC.,	:	AFFIDAVIT IN
PAUL HENRY MUSSEN, JOHN JANEWAY	:	SUPPORT OF MOTION
CONGER and JEROME KAGAN,	:	FOR PRELIMINARY
	:	INJUNCTION AND
	:	<u>OTHER RELIEF</u>
Defendants,	:	
	:	
BRIAN SUTTON-SMITH, an individual,	:	
and PRENTICE-HALL, INC., a Delaware	:	
corporation,	:	
	:	
Additional Defendants	:	
on Counterclaims.	:	

-----X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JEROME KAGAN, being duly sworn, deposes and says
that:

1. I am a defendant in this action and make this
Affidavit in support of a motion by all defendants for a pre-
liminary injunction, for separate trials on the copyright in-
fringement and libel issues and for other relief.

2. Since 1964, I have been a Professor of Psycho-
logy at Harvard University and have taught introductory college
courses in child psychology, as well as numerous other college
level and graduate courses, for over twenty years.

3. There are a wide variety of approaches to the study of child psychology and development. As stated in the preface of Developmental Psychology Today (CRM, 1971),

"Until quite recently, developmental psychology attempted merely to catalogue physical and behavioral changes at each age, and to set up norms. Now, however, exciting new methods and approaches are being used and new findings abound... Not all psychologists approach the study in the same way, of course. In such a complicated area, now in a period of great vitality, there are wide differences in theories and methods."

In their preface to the second edition of Child Psychology: Behavior and Development (John Wiley & Sons, 1969), authors Johnson and Medinnus comment on the "multi-disciplinary" nature of the field "since it draws on data gathered in such diverse fields as sociology, anthropology, behavioral genetics, pediatrics, and some areas of home economics."

4. Boyd McCandless, in his preface to the second edition of Children: Behavior and Development (Holt, Rinehart and Winston, 1967), comments upon the many "exciting" developments which have occurred and notes the "proliferating" literature and the "sophisticated investigation" and "imaginative research" in the field, at a time when "research has continued apace in older or more traditional areas of child psychology and development." His conclusion was that "with respect to the research and theoretical literature of the last six years, the increase in both quantity

Affidavit of Jerome Kagan in Support of Motion
(staggering) and quality (exceptionally gratifying) is indeed 174a
striking."

5. In our preface to the third edition of MCK, we also commented on the fact that the field had "changed radically" since the prior edition of MCK was published and that "the pace of systematic investigation has accelerated markedly...and the products of research have improved in both quantity and quality." Our approach, described in that preface, was to reflect our views on the critical changes in research and in theory which had occurred and present a contemporary view of the field of child psychology.

6. In view of the extraordinary variety of theoretical approaches to the subject and its inter-disciplinary nature, it is not surprising that the available textbooks are in many important respects quite dissimilar in emphasis and have substantial and fundamental differences in content coverage for the various topics. In fact, I understand that there are over 30 textbooks available for use in connection with introductory college child psychology courses. Yet, unlike any of the other textbooks in the field of which I am aware, the philosophy and approach of MCK is found virtually without exception in the emphasis and approach of the Meredith Book.

UNSOLICITED REACTIONS TO THE
PUBLICATION OF THE MEREDITH BOOK

7. On several occasions, my co-authors and myself have received unsolicited and spontaneous reactions that the

(set forth at pages 7-8 of Professor Mussen's response to plaintiff's interrogatories Nos. 5 and 6) involves an incident on June 20, 1973 with a child development teacher at Foothill Junior College in Las Altos, California. She recognized similarities since she made a practice of reviewing textbooks of potential use in her course. She said that she was "shocked" about the amount of similarity.

8. Another incident set forth by Dr. Mussen was that Professor Richard Atkinson of the Psychology Department of Stanford University and a member of the National Academy of Sciences told him that MCK had obviously been copied and that this was "outrageous" (ibid., at page 9). Dr. Mussen also related an incident when Professor Mavis Hetherington of the University of Virginia told Dr. Mussen that she and Professor Ross Parke of the University of Wisconsin had gone over the two books together and were both "shocked" by the amount of "copying" (ibid., at page 10).

9. In addition, Dr. Robert B. McCall, Senior Scientist at the Fels Research Institute, Yellow Springs, Ohio, called me in February 1974 and pointed out a glaring instance of one such similarity. At that time, he noted that at page 163 of MCK, a particular study by Dr. McCall and myself was described. That description included a reference to a group of infants who were shown stimuli depicted in two illustrations. Dr. McCall remarked that the same information is related in nearly the same way (even with the same thoughts italicized) at page 124 of the Meredith

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Affidavit of Jerome Kagan in Support of Motion
Book. He also commented that the emphasis given in MCK is not in fact the emphasis of the study by Dr. McCall and myself on which it is based, although, of course, the data reported in MCK was presented in the study. The Meredith Book also has the same emphasis as MCK, rather than the emphasis of the study itself. The Meredith Book fails to include a single reference to MCK.

10. In a letter dated February 15, 1974, that Dr. McCall wrote to Harper & Row at my request,* he also noted that MCK contained a description of certain research relating to vocalization of infants (MCK, p. 187). That description was based on my work which was not published at the time that MCK was published; thus, there is no attribution given to MCK. Later, however, and prior to the publication of the Meredith Book, that research was published in Kagan, Change and Continuity in Infancy. In the Meredith Book, however, a description of the research is described (page 146) but rather than being attributed to the research which I described in Change and Continuity in Infancy - which was available at the time of the preparation of the Meredith Book - it is attributed instead to the study by Dr. McCall and myself referred to in the preceding paragraph. As a matter of fact, however, none of these results as described in either the MCK text or the Meredith Book are contained in the study by Dr. McCall and myself.

11. On the basis of these examples, Dr. McCall's letter concluded that without taking this material directly from MCK, it would be nearly impossible or at least extraordinarily unlikely that such a mistake could be made. While noting that he

* Exhibit A annexed hereto.

Affidavit of Jerome Kagan in Support of Motion 177a
had not "read" the Meredith Book, apparently meaning that he had not read it in its entirety, he said that the similarity between MCK and Meredith Book was "so stark in places that one cannot avoid the thought of plagiarism." In fact, his opinion was that the Meredith Book represented "bad plagiarism" since it seemed to him that a "better job" could have been done.

12. I am informed that even Dr. Sutton-Smith received an unsolicited letter dated March 28, 1973 from Professor Robert A. Haaf, co-author of a study cited by Meredith (Def. Dep. Ex. 65). The letter pointed out the rather remarkable fact that the Meredith Book repeated the same error as MCK:

"I find it difficult to understand why you decided to perpetuate the error made by Mussen, Conger and Kagan rather than accurately reproduce the stimuli in Figure 5.3 as they actually appeared to the infants and as they appeared in the Child Development article." *

OVER 17,000 HOURS WERE DEVOTED
TO WRITING AND UPDATING MCK

13. Both during oral depositions and in answer to Meredith's Interrogatories, Paul Mussen, John Conger and I have testified to the methods of careful and exhaustive scholarship following in writing the four editions of our book. In the late 1940's while teaching child development, Paul and John became dissatisfied with the topical approach of available college texts and decided to write a child development book. (Mussen, Conger and Kagan Response to Interrogatories, p. 20-23). Their work began

* Exhibit B annexed hereto.

Affidavit of Jerome Kagan in Support of Motion 178a
on the first edition in late 1950 and did not finish until more
than five and one-half years later. Paul has estimated that he
devoted 5,000 hours to the research, organization and writing of
the book and John has estimated that he spent 4,000 hours.

14. I was principally responsible for research, re-
vising and rewriting, and updating of the second edition; naturally
Paul and John were intimately involved (among other things) in
deciding the changes to be made, criticizing my suggested changes,
and in revising and rewriting my draft manuscripts.

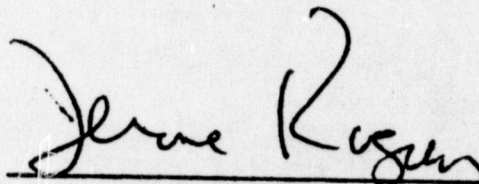
15. Our joint work of preparing the second edition
occupied our attention for well over four years from 1957 or 1958
until 1962. As a highly conservative estimate, I spent well over
1,500 hours; Paul spent some 400 hours and John about 500 hours.
(See Mussen, Conger & Kagan Response to Interrogatories, pp. 23-25.)

16. Preparation of the third edition was also a
joint effort with each bearing primary responsibility for 5 of the
15 chapters. My conservative estimate is that I worked about 1200
hours more on the third edition. John estimates it required one
year to write one of his 5 chapters, namely Chapter 4 (Chapter 2
of the Meredith) and that overall, he spent at least 2,000 hours.
Paul estimates that his efforts on the third edition took 2,400
hours.

17. As Wallace A. Kennedy, Professor at Florida
State University and author of Child Psychology (Prentice-Hall 1971)

Affidavit of Jerome Kagan in Support of Motion 179a
said in his preface of what he did when he decided to write his
book.

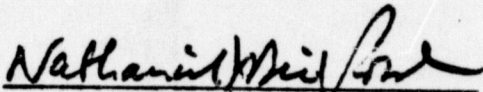
"I sat down for twelve hundred evenings
and wrote one."



Jerome Kagan

Sworn to before me this

20th day of May, 1974



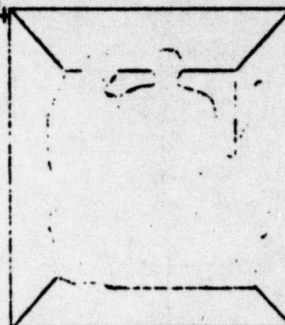
Notary Public

NATHANIEL J. BICKFORD
Notary Public, State of New York
No. 0286617
Queens County
Commission Expires 06, 1975

EXHIBITS ANNEXED TO AFFIDAVIT OF JEROME KAGAN

EXHIBIT A - LETTER FROM ROBERT B. McCALL TO THEODORE

The Fels Research Institute MILLER DATED FEBRUARY 15, 1974
Yellow Springs
Ohio 45387
Telephone 513 767 7324



Vol 2-3
5/14/74

180a

February 15, 1974

Mr. Theodore Miller, General Counsel
Harper & Row Publishers
10 E. 53rd Street
New York, N.Y.

Dear Mr. Miller:

I am writing you at the request of my good friend, Dr. Jerome Kagan of Harvard University, to relate an observation which may be pertinent to the current legal issues surrounding the publication of Child Psychology (Appleton Century Crofts, Brian Sutton-Smith) and Child Development and Personality, 3rd Edition (Harper & Row, Mussen, Conger, and Kagan).

In the MCK volume, page 163, begins a description of a study by McCall and Kagan (re 72). In that description, it is stated that a group of infants were shown the stimuli in Figures 5.10 and 5.11. This same information is related in nearly the same way (even with the same thoughts italicized) on page 124 of the BSS volume. It is interesting to note that the emphasis given in the MCK text is not the emphasis of the article, though the data reported in the text are in fact presented in the article. The BSS volume makes the same emphasis as the MCK text rather than the emphasis of the article itself.

However, apart from the similarity in presentation and emphasis, a more interesting and cogent event takes place later. In the MCK text on page 187 (first paragraph) is a description of research pertaining to vocalization in infants. In the course of that description, it is stated that children were "shown the faces illustrated in Figure 5.11." This is true, but the research described is actually taken from what is now Kagan's book entitled Continuity and Change, but was not published at the time the 3rd Edition of MCK was prepared. In the BSS volume, this same research is described on page 146, but rather than being attributed to Kagan's research published and available at the time in his book, Continuity and Change in Infancy, it is attributed to the same study by McCall and Kagan referred to in my above paragraph. Since in the MCK volume no reference is given for this research (it was as yet unpublished and the product of one of the authors of the text), but some stimuli were used in Kagan's research that were

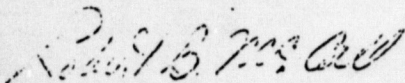
Exhibit A - Letter From Robert B. McCall to Theodore
Miller Dated February 15, 1974

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also used by McCall and Kagan, someone assumed that therefore the research described on page 187 of MCK was also to be attributed to McCall and Kagan. As a matter of fact, none of the results described in either text are contained in that article. Without taking this study directly from the MCK volume, it would be nearly impossible (or at least extraordinarily unlikely) that someone would make this mistake.

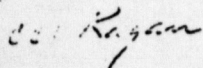
Although I have not read the BSS volume, the similarity between it and the 3rd Edition of MCK is so stark in places that one cannot avoid the thought of plagiarism. In fact, in my opinion it is even bad plagiarism. Surely one could have done a better job than that. One can only wonder what Sutton-Smith wishes to imply in the acknowledgements (page xv) where he boastfully tells us his family did not suffer through his writing of this volume and then cryptically remarks "there are different games in my family, just as there are in this book."

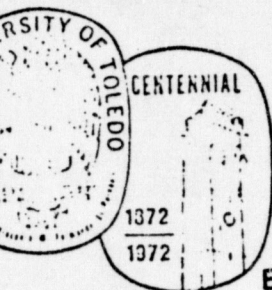
Sincerely yours,



Robert B. McCall, Ph.D.
Senior Scientist

RBK/njr





*Dept Ex 65
5/7/74 JAH*

THE UNIVERSITY OF TOLEDO / TOLEDO, OHIO 43606 / [419] 531-5711

College of Arts and Sciences

Department of Psychology

EXHIBIT B - LETTER FROM ROBERT A. HAAF TO BRIAN SUTTON-
SMITH DATED MARCH 28, 1973

March 28, 1973

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Dr. Brian Sutton-Smith
Department of Psychology
Columbia University Teachers College
New York, N.Y. 10027

Dear Dr. Sutton-Smith

With regard to your new Child Psychology book, the fact that you have chosen to refer to the Haaf and Bell, (Child Development 1967) article on page 123 is indicative of your good judgement among things psychological. However, the artistic modifications of stimuli which appear in Figure 5.3 raises a question about you or your editor's attentional preferences. I rather doubt that our infants would have responded in the same way to the stimuli which you show as they did to the original stimuli. I find it difficult to understand why you decided to perpetuate the error made by Massen, Carger and Kagan rather than accurately reproduce the stimuli in Figure 5.3 as they actually appeared to the infants and as they appeared in the Child Development article.

Somewhat sincerely,

Robert A. Haaf, Ph.D.
Assistant Professor

RAH/jsc

INTERIM MEMORANDUM AND ORDER

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Defendants, Mussen, Conger & Kagan, authors of a text on child psychology and their publisher, Harper & Row, Inc. move for a preliminary injunction of the dissemination and the marketing of a text on child psychology developed by plaintiff, Meredith Corporation, published by Prentice Hall, Inc., a defendant on a counterclaim and bearing as named author defendant Brian Sutton-Smith. The preliminary injunction is granted, there being a clear convincing showing of plagiarism and all other legal requisites for temporary relief being met. The parties are to appear before me on May 24th at 3:30 P.M. for the fashioning of appropriate relief. Trial on the merits herein as set forth is set for June 10 at 2:00 P.M. upon the issues of the validity of the copyright and its infringement. Trial on the issue of damages is deferred as is the cause of action for damages for libel and unfair competition and discovery in connection with said causes of action are stayed due to the urgency of time the Court's determination is herewith announced.

A full opinion follows.

SO ORDERED

EXHIBIT 1

Additional Defendants
on Counterclaims.

:
:
: Index No.
73 Civ. 5446 (RO)
:
:
: PRELIMINARY INJUNCTION

This case came on to be heard on defendants' motion, brought on by order to show cause, dated May 13, 1973, for a preliminary injunction and the Court having considered the verified complaint, the affidavits and exhibits submitted in support of said motion and in opposition thereto, and having heard argument by counsel in support thereof and in opposition thereto, and it appearing to the Court after due deliberation that plaintiffs and the Additional Defendants are actually engaged and will continue to engage in violating the provisions of the Copyright Act, 17 U.S.C. § 1 et seq., to the irreparable injury of the defendants, and the Court having made and filed its findings of fact and conclusions of law, it is

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Preliminary Injunction

ORDERED, that plaintiff Meredith Corporation and Addi-

tional Defendants Brian Sutton-Smith and Prentice-Hall, Inc., their agents, servants, employees and attorneys and all persons in active concert and participation with them be and hereby are restrained and enjoined, pending the determination of this action, from selling and offering for sale, or engaging in the advertising, marketing or promotion of, a certain textbook entitled Child

Psychology
Development, the author of which is represented to be Brian Sutton-Smith; provided that defendants, or any of them, first give security in the sum of \$75,000 for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined, such bond to be approved by the Court or the Clerk of the Court no later than May 24, 1974 at 5:00.

Dated: New York, New York

May 24, 1974.

U. S. D. J.

Patty Whitman

OPINION (Filed May 30, 1974)
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

186a

-----X
MEREDITH CORPORATION,

Plaintiff,

-against-

HARPER & ROW, PUBLISHERS, INC.,
PAUL HENRY MUSSEN, JOHN JANEWAY
CONGER, and JEROME KAGAN,

Defendants,

BRIAN SUTTON-SMITH, an individual
and PRENTICE-HALL, INC., a
Delaware Corporation,

Additional Defendants on
Counterclaim.
-----X

73 Civ. 5446

OPINION

Alleging plagiarism, Harper & Row, Inc., publisher, and Drs. Mussen, Conger and Kagan, authors of "Child Development and Personality", third edition,* move to enjoin the sale of a competing textbook "Child Psychology" prepared by Meredith Corporation,** published

*Hereinafter "Mussen".

**Hereinafter "Meredith".

Opinion

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by Prentice-Hall, Inc., with Brian Sutton-Smith as its named author.* On the record before me there is not only a showing of a probability of success on the merits, but indeed clear and convincing proof of plagiarism,** and the need for immediate relief being established, I grant the preliminary injunction.***

Mussen, it appears, has been, and is, not only one of Harper's most profitable college texts but also one of the most widely used child development college textbooks in the United States, with approximately thirty percent of the market. While many child development texts compete for this market, no single text may be said to dominate the field.****

*Meredith, demanding a declaratory judgment and other relief, won the "race" to the Courthouse, hence the inversion of the parties.

**In order to establish their right to the relief requested defendants must first satisfy the two elements comprising a prima facie case of copyright infringement; (1) ownership of the copyright and (2) copying which is normally established by proof of access and substantial similarity, McGraw Hill, Inc. v. Worth Publishers, Inc., 335 F.Supp. 415 (S.D.N.Y. 1971).

***Other aspects on this motion are disposed of by my earlier interim memorandum of May 23, 1974.

****McGraw-Hill Inc. v. Worth Publishers, Inc., supra, is not applicable here since the field of child psychology is characterized by a wide divergence among the texts in both the subjects selected, and their organization and approach, unlike the field of economics in which there is a single predominant approach to the materials.

In 1971 editors of Meredith decided to publish a textbook in the field of child development. In order to achieve the widest market for its textbook, Meredith ordered a market research study, and thereby identified Mussen's book as the leading child development text in the field. A subsequent internal memorandum reveals that Meredith selected Mussen to serve as the content model "in terms of topics to be included, weighting of topics, and sequencing of the topics." Meredith next prepared initial detailed chapter outlines of Mussen and then rearranged the outlines, often in haec verba for distribution to freelance writers engaged to prepare the initial draft of the proposed Meredith text. The freelance writers engaged were not professional psychologists and often had no background in psychology whatsoever.*

Each writer hired by Meredith was required to furnish a manuscript of each chapter assigned to him within a period of weeks. Meredith's employees then reviewed the manuscripts and were instructed in writing to call the editors' attention to any material omissions

*One such writer had never taken a course in psychology, and was employed as a fulltime speech writer for Exxon Corporation while furnishing several chapters of the Meredith book.

or deviations from the Mussen text.*

The conscious paraphrasing of Mussen and simultaneous attempt at disguise is revealed in a Meredith memorandum sent to a development editor dealing with the first draft of chapter 10 of the Meredith book. The memorandum notes that a certain discussion of a phenomenon among the Ibo tribe is taken from the Mussen text and states: "can we find another group besides Ibo as this is a dead giveaway?" There was another "dead giveaway." In the Mussen text, numbers appear following certain studies. These numbers enable the reader to go to an index at the end of the text and ascertain the author and year of preparation of each such study. One such number was erroneous. The Meredith text uses the same study and names Mussen's "erroneous" author as its source.

The limited participation of Professor Brian Sutton-Smith as "author" of the Meredith book is also significant. He received only a 3% royalty rather than the traditional 15% royalty received by most authors of college textbooks. He did not write the first draft of any chapter of the Meredith book, and had no knowledge

*One memorandum states: "Resist the temptation to impose your own view of the subject matter, the model and the marketing report are the arbiters combined with your own common sense."

of what the writers had done in preparing the first draft. His was but a part-time commitment to the Meredith book which only extended over a six months period.*

Professor Sutton-Smith was aware of the manner of the preparation of the materials. Indeed he provided Meredith with the outlines of three Mussen chapters with page references. Further, during his supervisory participation, he wrote in various memoranda to Meredith editors as follows: "In socialization...My assumption is that you will follow [Mussen] fairly closely..." and "Notes on the adolescent chapter... Mussen's material is pretty adequate but could be condensed..." and "Social Development...Mussen, etc. have good coverage of facts, babbling, smiling, crying and sucking. Tho put babbling in third chapter..."

At one point he even expressed a fear that plagiarism was being committed in the preparation of

*It appears that normally thousands of hours over several years are required by authors to prepare manuscripts for child psychology textbooks. Together the three authors of the Mussen text spent upwards of 17,000 hours in preparation of their textbook and revised editions.

the Meredith text.* Notwithstanding his concern, the problem was not solved, and perhaps one-third or more of the Meredith book is in my opinion, a recognizable paraphrase of Mussen, third edition. I have set forth the in/Appendix related passages of the two texts demonstrating the copying. These are typical and were selected from the some 400 submitted to me for consideration.

Meredith, in its memorandum, admits some use of Mussen in the preparation of its text but asserts such use is privileged by the doctrine of "fair use". On the record before me the doctrine is hardly applicable.

*"July 22nd, 1972.

Miss Julie Small,
Editor, Appleton-Century.

Dear Julie,

I find this first draft of chapter 10 totally unsatisfactory; the major reason being that it is an almost direct paraphrase of MCK and G&O. Guidance and hints from such other books, yes; but copying, no. This writer has got to go. I have not felt the others were like this but did a good job of assimilating a diverse mass of material. But this particular effort has illegal overtones and I will have nothing to do with it. While reading this effort I felt the need for a lawyer. This is not what the enterprise was meant to do. Joe Church was telling me the other day how they had to take action against Psychol Today for a similar copying from their text.

I believe I asked you earlier for a very close watch on this type of paraphrasing. I insist again that one of your workers go through the chapters and give us a sentence count or some such. Whats the good of losing the whole effort because of this sort of behavior.

Yours sincerely,

Brian Sutton-Smith"

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Fair use is sometimes defined as:

...a privilege in other than the owner of the copyright to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner by the copyright.*

Originally "fair use" was based on the assumption that the user might copy an insignificant portion of protected material while freely using unprotected material. The doctrine then developed to permit more than insignificant copying of protected material where such copying was clearly in the public interest and served the underlying purpose of the Copyright Act, to wit:

To promote the Progress of science
and useful arts...U.S. Const. Article
1 Sec. 8.

Thus, fair use has been recognized as a valid affirmative defense in some cases even where there has been significant copying. The test of whether the use of a significant amount of protected material is fair depends, however, upon many different factors. Nimmer on Copyrights recognizes that there is no absolute standard (p.645):

*Ball, The Law of Copyright and Literary Property, 260 (1944); Latman, Fair Use of Copyright Works, Study No. 14; Senate Subcommittee on Patents, Trademarks and Copyrights (Comm. Print 1960).

Opinion

Fair use is to be determined by a consideration of all of the evidence, and among other elements entering into the determination of the issue, are the extent and relative value of copyrighted material, and the effect upon the distribution of objects of the original work. Whether a particular use of a copyrighted article, without permission of the owner, is a fair use, depends upon the circumstances of the particular case, and the court must look to the nature and objects of the selections made, the quantity and value of material used, and the degree in which the use may prejudice the sale, diminish the profits, or supersede the objects of the original work...fair use is to be determined by a consideration of all the evidence in the case...." Mathews Conveyor Co.v. Palmer-Bee Co., 135 F.2d 73,85 (6th Cir. 1943); Nimmer, supra.

In determining whether the use here is "fair", I conclude the following three factors should be considered: (1) the competitive effect and function of the usage, (2) the quantity of the materials used, and (3) the purpose of the selections made.

As to (1) the competitive effect of the taking, Nimmer states (p.646):

...it is believed that the actual decisions bearing upon fair use, if not always their stated rationale, can best be explained by looking to the central question of whether the defendant's work tends to diminish or prejudice the potential sale of the plaintiff's work. This determination must be made not by comparing the media in which the two works may appear, but rather in terms of the function of each work regardless of media.

Opinion

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There is no dispute here that these two textbooks compete for sales in the identical market. Indeed Meredith determined that Mussen was the text to be emulated for this market. In view of the clear evidence of copying on this record, I therefore conclude that the sale of the Meredith book in the same marketplace as Mussen would substantially injure the revenues of the Mussen book.

As to (2), the quantity of the materials used, I conclude on the record before me on this motion for a preliminary injunction, that this is not a case of insignificant copying. It is clear from even a cursory comparison of the some 400 passages from both texts submitted to me that substantial amounts of Mussen have been taken and paraphrased by Meredith.* Further, a comparison of the Meredith chapter outlines prepared from Mussen submitted to me demonstrates an extensive taking of the entire structure and topical sequence of Mussen. This is far beyond any copying sanctioned in Rosemont Enterprises, Inc. v. Random House, Inc., 366 F.2d 303 (2nd Cir. 1966) upon which Meredith relies. There the Court stated (p.310):

*It is appropriate to note that even a small usage may be unfair if it is of critical importance to the work as a whole and taken by the infringer in order to save the time and expense incurred by the copyright owner. See Colonial Book Co. v. Amsco Book Co., 41 F.Supp. 156 (S.D.N.Y. 1941); College Entrance Book Co. v. Amsco Book Co., 119 F.2d 874 (2nd Cir. 1941).

Opinion

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The fair use privilege is based on the concept of reasonableness and extensive verbatim copying or paraphrasing of material set down by another cannot satisfy that standard.

See to identical effect Orgel v. Clark Boardman Co., 301 F.2d 119 (2nd Cir.), cert. den., 371 U.S. 817 (1962). There the Court rejected the fair use defense and found infringement based on a finding that merely one important section of a law treatise was "strikingly similar" to the copyrighted work and thus the defendant's book was merely a "colorable variation" of the infringed work. The Court stated at p.120:

Appropriation of the fruits of another's labor and skill in order to publish a rival work without the expenditure of the time and effort required for the independently arrived at result is copyright infringement.

As to (3) the purpose of the "use", there is no question on this record that it was to enable Meredith to compete with the very text from which the selections were taken (see supra). That this is impermissible hardly needs statement.

Finally, it should be observed that were the result otherwise on this record, some child psychology students would be studying mere paraphrases of scholarship and not the original work of

scholarship itself.* Further, it is hardly an inducement to someone like a Dr. Mussen to do the years of research and scholarship needed to produce an authoritative text if an untrained freelance speech writer for an oil company may paraphrase major portions and make a competing text out of it.

Meredith and Prentice-Hall next urge the defense of laches. If in fact Harper and Mussen had slept on their rights for fourteen months since discovery of possible infringement, they might well have forfeited their right to the extraordinary relief of a preliminary injunction. Gianni Cereda Fabrics, Inc. v. Bazaar Fabrics, Inc. 335 F.Supp. 278 (S.D.N.Y. 1971); Irving J. Dorfman, Inc. v. Borlan Industries, Inc., 309 F.Supp. 21 (S.D.N.Y. 1969).

However, I conclude that they were not unduly dilatory in asserting their rights. Immediately after discovery in March 1973 of the possibility of infringement they commenced a study of the similarities between the two texts. In September, upon completion of the study which finally took the form of a lengthy

*And can one doubt that much accuracy can be lost in the paraphrasing when for example the paraphrase changes the "Ibos" to another tribe to avoid a "dead-giveaway?" (see supra).

exhibit presenting numerous similar portions of the two texts side-by-side, a copy of the exhibit along with notice of infringement was sent to Meredith. In October, Meredith voluntarily withdrew its book from the market. To defendant's knowledge the book did not reappear until January 1974, shortly after the commencement of the present action. Until January 1974, therefore, there could be no claim of delay in asserting rights.

At a pretrial conference before me shortly thereafter in March, Harper and Mussen stated their intention to seek a preliminary injunction. However, at my suggestion they agreed instead to a June 3, 1974 trial date which, in normal years, would have preceded the peak of the textbook selling season.

However, there were at least three developments negating laches in the period preceding the motion. First, extensive discovery in April and May unearthed both documentary and testimonial evidence of intention to copy. Second, it became apparent that the peak selling season for college textbooks this year was earlier than normal, Harper being informed that Prentice-Hall was encouraging its customers to purchase earlier than the usual July-August period because of a possible shortage of paper supplies. Third, it had become likely that because of discovery problems the early June trial date for a permanent

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injunction was in jeopardy. Thus the possible postponement of the trial threatened to deny Mussen protection from infringement over the entire peak selling season.* Earlier protection was therefore needed.

As to irreparable injury to Harper and Mussen, I am unwilling, considering the clear and convincing evidence of extensive copying of the Mussen text and the likelihood of injury to the pursuit of genuine scholarship in the academic community, to subject Harper and Mussen to further injury to revenue goodwill or reputation during 1) the present peak selling period** and 2) for the period in the future during which the Mussen textbook would remain in use

*I note that the timing of the injunction in relation to the normal textbook selling season is a significant factor in determining the necessity for injunctive relief. See McGraw-Hill v. Worth Publishers, Inc., supra.

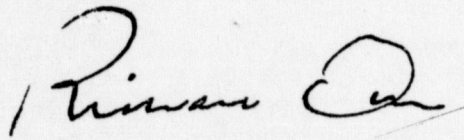
**It is argued by Meredith, et al, that no injunction is needed since the alleged plagiarism is of Mussen's third edition, and a revised fourth edition has just been published which is new in content and is selling well. This argument, however seriously proffered, is answered by the question: Why should Mussen's fourth edition have to suffer any competition from a substantially plagiarised version of the third edition?

Opinion

199a

after initial selection.* It is established law that where the moving party "...has made out a prima facie case of copyright infringement it is entitled to a preliminary injunction even without a detailed showing of danger of irreparable harm." Uneda Doll Co. Inc. v. Goldfarb Novelty Co., 373 F.2d 851,852 (2d Cir. 1967). Since I find on this record more than sufficient likelihood of irreparable harm to justify the injunctive relief demanded, and in addition the clearest showing of both the 1) intent to copy and 2) extensive copying, the preliminary injunction is granted.

New York, N.Y.
May 29, 1974.



U. S. D. J.

*In normal practice, once a text is adopted by a professor for his course, he continues its use for a number of years, being unwilling to revise the teaching notes for his course to dovetail with a different text.

MUSSEN - Page 149

THE NEWBORN

The Initial Equipment

Surprisingly, the newborn is a remarkably capable organism from the moment he begins to breathe. He can see, hear, and smell, and he is sensitive to pain, touch, and change in position. The only sense modality which may not be functioning immediately at birth is taste, but even this sense develops rather quickly. The infant is biologically ready to experience most of the basic sensations of his species from the moment he is born. This is not true of all mammals. Puppies, as the reader may know, are both blind and deaf at birth.

MEREDITH - Page 114

THE STATE OF THE NEWBORN

The Infant's Senses

From his first breath, the child is remarkably well-equipped for life. He can see, hear, smell, touch, and feel pain. All his senses, except taste, are operating immediately, and even taste develops rapidly. From his first moment outside the womb, the human infant can feel most stimuli that adults experience. Unlike many mammals - the puppy, for instance, born deaf and blind - the senses of the newborn child are in good working order.

MUSSEN - Page 147

The timing and rate of ossification differs with the various bones of the body and among individuals. Some of the bones of the hand and wrist ossify very early in life, and by the end of the first year most children have developed three of their total (i.e., adult) complement of 28 hand and wrist bones. Other skeletal parts ossify later. The skull of the newborn infant has six soft spots (fontanelles) which ossify gradually and do not disappear until the child is about 2 years of age. Other bones develop still later (98).

As with other aspects of development, there are marked individual and group differences in rates of ossification and skeletal growth. Sex differences in skeletal development favoring girls are present at birth and increase with age. Negro infants are generally advanced beyond white infants (100). Moreover, broad-framed children tend to have a faster rate of ossification than narrow-framed children. Hereditary factors markedly affect the rate and timing of skeletal development, although illness, allergies, and malnutrition may produce disturbances of ossification.

MEREDITH - Page 119

The baby's bones ossify at different times and different speeds. However, the hardening of some bones is all but guaranteed by certain ages. By 1 year of age, for example, 3 of the 28 hand and wrist bones have already ossified. Other bones, such as those of the skull, take longer to harden. The six soft spots of the infant skull (called fontanelles) do not harden thoroughly until the child is about 2 years old. Still other bones take years more to ossify completely.

Ossification and skeletal growth, like weight and size, also vary markedly among individuals and groups. Sex is one important factor related to such variation. From birth, a girl's bones grow more quickly. Genes also strongly affect the timing and rate of skeletal development. For example, the bones of the broad-framed child ossify faster than those of the narrowly built child. While genes are prime determinants of bone hardening, sickness, malnutrition, and allergies also can affect ossification.

MUSSEN - Pages 300-301

Reversal Shifts. A child capable of using verbal mediators and abstracting can perform successfully in reversal learning or reversal-shift problems (40-44). In these problems, he must learn to switch his responses, to do the opposite of what he has done previously in the same situation. The task involves a simple discrimination, e.g., discovering which of two different squares varying both in size (large and small) and color (black and white) is correct and brings the reward (a marble). The subject is consistently reinforced or rewarded only for choosing in terms of one dimension. Thus, if size is the relevant dimension, choosing the larger of two squares, regardless of its color, will bring a reward. (Color would be irrelevant and must be ignored.) After learning this discrimination, the child is presented with a new problem: he must make a reversal shift and choose the small rather than the large square to obtain a reward. In another kind of shift, a nonreversal shift, the subject would be required to choose what was previously the irrelevant dimension - that is, to make his choice on the basis of color (black or white) rather than of size.

If children can make mediated verbal responses - if they can say something like "the size is what's important," - they find it relatively easy to learn this reversal shift. Many nursery school children do not give themselves verbal instructions and have difficulty with reversal shifts; nonreversal shifts are easier for them. Children over 7 make reversal shifts easily, but only about half of the children of kindergarten age do. Among the latter, fast learners (who probably have greater verbal facility and are more advanced in using verbal mediation) achieve reversal shifts more easily than slow learners, who presumably have less verbal ability (41-43). These findings suggest that ages 5 to 7 may be an extremely important transition period during which verbal mediation is becoming a powerful process in problem-solving.

MEREDITH - Page 315

Once a child learns to use verbal mediators, he also can do well in an area of learning that involves reversal-shift problems. The child's basic task in such an exercise is to shift his responses and do the opposite

APPENDIX - 3, Meredith Page 315, cont'd.

of what he did earlier in the identical circumstance. Earlier he might have been rewarded for picking the larger of two blocks, one black and the other white. The size was the key characteristic, not the color. After the child learns to pick out the larger block regardless of color, the task is changed, introducing the reversal shift. The child must completely reverse his response and pick the small block this time. The non-reversal shift is another kind of change and demands a different response. This time the child would have to choose the block on the basis of color-previously an irrelevant characteristic - rather than on the basis of size. For example, the white block might be the correct choice.

The child who can make mediated verbal responses - in effect coaching himself by saying, "Look for the size of the block" - has no problem with the reversal shift. Accordingly, children over 7 are adept at reversal shifts. Preschoolers do better at nonreversal shifts because part of their earlier responses are still adequate: half the large blocks are the right color. Among kindergartners, fast learners - who tend to be proficient verbally and, therefore, good at verbal mediation - learn to perform reversal shifts more rapidly than their slower-learning peers. The difference between kindergarten and first-grade children suggests that in the period between ages 5 and 7 verbal mediation is developing into an effective cognitive tool for problem solving.

EXCERPTS OF DEPOSITIONS OF BRIAN SUTTON-SMITH 3

* * *

B R I A N S U T T O N - S M I T H, called as a witness, having been first duly sworn by a Notary Public of the State of New York, testified as follows:

EXAMINATION BY

MR. MILLER:

Q Would you state your name, please?

A Brian Sutton-Smith.

Q Where do you reside?

A 62 Beechwood Terrace, South Yonkers.

Q You are the author listed on the book Child Psychology published by Appleton-Century-Crofts?

A Yes.

Q Would you tell me whether you approached Appleton-Century-Crofts or Appleton-Century-Crofts approached you concerning your involvement in this publication?

A They approached me.

Q When did that occur?

A It would be -- there is a letter that I have in the records and it would probably be two or three weeks before that, or a couple of weeks before that. I can't recollect the date. Summer of -- when did we begin doing it, 1971, the book?

Summer of 1972. That's my best recollection.
Summer or late summer. Maybe late summer is more accurate.

1
2 End of August, beginning of September. Somewhere in there.

3 MR. BERGER: I think it was 1971.

4 Q Were you approached by letter or in some other way?

5 A First by phone call and then later by letter.

6 MR. MILLER: I hand the reporter a document
7 dated October 15, 1971, from Lynne Lumsden to
8 Professor Brian Sutton-Smith, and request that it
9 be marked Defendants' Exhibit 56 for identification.

10 (A document dated October 15, 1971, from
11 Lynne Lumsden to Professor Brian Sutton-Smith was
12 marked Defendants' Exhibit 56 for identification,
13 as of this date.)

14 MR. MILLER: For the record, this was a docu-
15 ment produced by Prentice-Hall.

16 A The letter I had in my file was one subsequent to
17 that.

18 BY MR. MILLER:

19 Q Professor Sutton-Smith, is that a letter which you
20 received from Appleton-Century?

21 A To the best of my knowledge, yes.

22 Q Was that the first contact that you had from
23 Appleton-Century concerning this project?

24 A It might have been. I remember there was a phone
25 call and a letter. But I didn't recollect the letter.

1
2 This looks like an earlier letter. So it may have been the
3 first contact.

4 Q You recollect a telephone call?

5 A Yes, I do.

6 Q Who was that telephone call with?

7 A Lynne Lumsden.

8 Q What was said during that telephone call?

9 A My recollection is not very good. But it was this
10 sort of thing. They were writing a text and were interested
11 in the possibility of my becoming an author, something like
12 that. And it was a different sort of a text where there
13 would be a lot of assistance. That is about as much as I
14 remember.

15 Q Was anything said in detail about the assistance
16 that would be provided during that telephone call?

17 A No. I don't think so. I mean, there would be
18 researchers and writers involved; at least that I am sure of.

19 Q Was it said that you would not be called upon to
20 write the book?

21 A Well, the actual writing, yes, the actual final
22 writing. I think that was indicated that there would be
23 professional writers working on the book with me, yes.
24 At least, that was said in the beginning.

25 Q And that they would do the writing of the book?

1
2 A You are putting it like -- it didn't come over
3 quite like that. It would be my book and my ideas and my
4 content, but there would be professional writers writing
5 after I had submitted materials. In that sense, yes.

6 Q During that telephone call, was there discussion
7 of the materials that you would submit?

8 A I don't think so. This was preliminary. There was,
9 I think, another letter which is in my file which I submitted
10 to you.

11 MR. MILLER: I hand the reporter a document,
12 two pages, dated October 26, 1971, from Appleton-
13 Century-Crofts to Brian Sutton-Smith, and request
14 that it be marked Defendants' Exhibit 57 for
15 identification.

16 (A two-page letter, dated October 26, 1971,
17 from Appleton-Century-Crofts to Professor Sutton-
18 Smith was marked Defendants' Exhibit 57 for
19 identification, as of this date.)

20 BY MR. MILLER:

21 Q Professor Sutton-Smith, is Defendants' Exhibit 57
22 for identification a letter which you received from Appleton-
23 Century-Crofts?

24 A Yes.

25 MR. BERGER: I believe that this was part of

1
2 the documents we produced.

3 MR. MILLER: This was a letter which was
4 produced by Professor Sutton-Smith; that is
5 correct.

6 BY MR. MILLER:

7 Q Professor Sutton-Smith, after receiving this
8 letter, did you have any further discussions with personnel
9 at Appleton-Century-Crofts concerning the nature of your
10 involvement in this project?

11 A Yes.

12 Q What discussions did you have?

13 A I know there was a meeting with Lynne Lumsden
14 and Jourard -- what's his first name --

15 Q Julian Jourard?

16 A Yes.

17 Q That was subsequent to the letter of October 26,
18 1971?

19 A That I'm not sure of. It's in the vicinity of
20 this time. It looks like logically as if it ought to have
21 been. But I don't recollect. It was certainly in the vicin-
22 ity of this time.

23 Q Was anyone else present at this meeting besides
24 yourself and Lynne Lumsden and Julian Jourard?

25 A Not at the first meeting that I have in mind.

1
2 Q Where did that meeting take place?

3 A Part of it in their office and a part of it at
4 lunch.

5 Q How long did the meeting last?

6 A We went on after lunch, as I recollect, well into
7 the afternoon. So I'll say 'til three, twelve to three or
8 eleven to three. It was in that vicinity. I am again not
9 sure. But it was a relatively long meeting.

10 Q Would you tell me what you can recollect about
11 what was said at that meeting?

12 A Not much, really. I think we signed the contract
13 at that time. I think that was the contract signing. I
14 am not absolutely sure of that, but I think that was what
15 it was for.

16 Q Did you discuss the terms of the contract at the
17 meeting?

18 A I read it. I'm sure I read it at that time, yes.

19 Q Do you remember any discussion about the terms of
20 the contract at the meeting?

21 A Well, there was a discussion of the terms, I guess,
22 explanation of the terms and so on.

23 Q What was said concerning the terms of the contract?

24 A Well, the hope was that -- I was concerned with a
25 relatively small percentage but they felt that there was

1 fair chance of the book being a fairly successful book and I
2 had to count that against the relatively small percentage;
3 that there would be assistance, that this was a book that
4 would take less time than if I wrote the book by myself,
5 and that was a very convincing argument to me.
6

7 That's about what I recollect.

8 Q Was anything else said that you can remember at
9 that meeting concerning your involvement in the project?

10 A No. I don't think so. They were not really the
11 organizers of the project, it seems to me. They were the
12 front office or some higher management. The book wasn't
13 organized with them in my dealings, anyway.

14 Q Was there any mention of the words "managed text
15 books" at that meeting?

16 A That word in my recollection came into discourse
17 later. It might have been, but I have sort of the feeling
18 that it was a term applied somewhat later.

19 Q Is it your best recollection that the meeting took
20 place after the October 26th letter?

21 MR. BERGER: I think the answer is that he
22 has no definite recollection. I am stating an
23 answer that the witness has given. But, he be-
24 lieves it based on the logic of the letter.

25 A That's true.

1
2 Q Would you read the letter and perhaps that might,
3 or might not, I don't know, indicate to you?

4 A I have read it, because I gave it to you just the
5 other week.

6 Q Was there --

7 A See, here. It says, "If you later choose to work
8 would you please not hesitate to contact me."

9 The logic of the letter is that I then contacted
10 her. What can I say?

11 MR. BERGER: I think that is all you need to
12 say.

13 BY MR. MILLER:

14 Q Do you recall any discussion of the letter during
15 that conversation?

16 A No. I don't recall any.

17 Q Do you recall any discussion with personnel at
18 Appleton-Century concerning the contents of the letter?

19 A Not this letter, no.

20 Q Did you ever, yourself, have correspondence with
21 Appleton-Century concerning the contents of the letter of
22 October 26, 1971?

23 A I don't suppose so, unless I wrote back to her and
24 said, yes, I will meet you, or something. My recollection is
25 I phoned and we met. But I'm not sure.

1
2 Q Professor Sutton-Smith, you believe that you had
3 a telephone call and then you met with Lynne Lumsden and
4 Julian Jourard.

5 Who did you telephone?

6 A Lynne, I think.

7 Q What was said during that telephone call?

8 A I have no idea.

9 Q To the best of your recollection, the purpose was
10 to set up a meeting?

11 A Yes.

12 MR. MILLER: I hand the reporter two agree-
13 ments, both dated 15, November, 1971, between
14 Appleton-Century-Crofts, Division of Meredith
15 Corporation, and Brian Sutton-Smith, and request
16 that the agreement relating to Child Psychology
17 be marked Defendants' Exhibit 58-A for identifica-
18 tion and the agreement relating to a book of
19 readings be marked Defendants' Exhibit 58-B for
20 identification.

21 (An agreement relating to Child Psychology
22 between Appleton-Century-Crofts, Division of
23 Meredith Corporation, and Brian Sutton-Smith,
24 dated November 15, 1971, was marked Defendants'
25 Exhibit 58-A for identification, as of this date.)

(An agreement relating to a book of readings between Appleton-Century-Crofts, Division of Meredith Corporation, and Brian Sutton-Smith, dated November 15, 1971, was marked Defendants' Exhibit 58-B for identification, as of this date.)

BY MR. MILLER:

Q Professor Sutton-Smith, would you please tell me what the two exhibits are which I have just handed you, 58-A and 58-B for identification?

A These are the contracts that I signed on that occasion. At least the first one. I am not sure -- are the dates the same?

MR. BERGER: Yes.

A Yes. Okay.

Q Is it your best recollection that you signed both of these contracts at the meeting that you have just described?

A Yes.

Q At that time were the contracts signed on behalf of Appleton-Century-Crofts?

A I don't think so. I don't suppose they could have been because Walther certainly wasn't there.

Q Professor Sutton-Smith, the contracts are dated November 15, 1971. Is it your recollection that the agreement

1
2 was signed by you on the same date that appears in the
3 contract?

4 A I couldn't be sure. It seems probable. I can't
5 be sure.

6 Q After your meeting at which Lynne Lumsden and
7 Julian Jourard attended, did you have another meeting then
8 with personnel at Appleton-Century-Crofts?

9 A Yes. Sometime there I met -- this was a sort of
10 real beginning of the project with Joan Winer Brown.
11 And there was somebody else. It may have been Mary Schieck.
12 I am not sure. I know somebody else was there.

13 And I suppose, Julie Small was there, but I don't
14 recollect her so well. And maybe Elizabeth Brown. I'm
15 not sure. There were three or four of them. Two or three,
16 anyway.

17 Q Was Lynne Lumsden there?

18 A No. I don't think so.

19 Q Or Julian Jourard?

20 A No. I don't think so. That was sort of the end of
21 them.

22 Now, we began the book. They were introducees.

23 MR. MILLER: I hand the reporter a document
24 dated November 23, 1971, a letter from Joan Winer
25 Brown to Brian Sutton-Smith, and request that it

be marked Defendants' Exhibit 59 for identification.

(A one-page letter, dated November 23, 1971, from Joan Winer Brown to Brian Sutton-Smith, was marked Defendants' Exhibit 59 for identification, as of this date.)

BY MR. MILLER:

Q Is this a letter, Professor Sutton-Smith, I am referring to Defendants' Exhibit 59 for identification which you received from Appleton-Century-Crofts?

A Yes. This is the one I submitted to you.

Q Yes. That is correct.

The first paragraph of the letter refers to a meeting on Monday, November 29, 1971?

A Yes.

Q Is that the meeting that you have just referred to?

A I think so. Judging by this letter, Miss Julie Small wasn't there and that fits sort of my feeling. But there were three people and they are the others that are mentioned. At least, anyway, Joan Winer Brown. That I am sure.

(CONTINUED ON NEXT PAGE.)

1
2 Q Is it your belief from the letter that Julie Small
3 would not be at the meeting?

4 MR. BERGER: I call your attention to the
5 next to the last paragraph.

6 A The letter says that she is going to be introduced
7 the following week. So that does concur with my recollection
8 of being uncertain about her being there at that meeting.

9 And I got introduced to her the next week, I
10 think.

11 MR. BERGER: I think you are a little
12 confused. This was written on November 23rd and
13 the meeting was on November 29th.

14 A I see what you mean. I remember the interaction
15 with Joan Winer Brown. I don't remember the others very
16 well.

17 Q Did you have a meeting with Joan Winer Brown prior
18 to this letter of November 23, 1971?

19 A I don't think so.

20 Q Did you have any telephone calls with Joan Winer
21 Brown prior to this letter?

22 A I just don't recollect. Again, I don't think so.
23 It's most uncertain.

24 Q Professor Sutton-Smith, up to the meeting which
25 I am just going to ask you about which apparently took place

1 2
2 on November 28th have you told us all meetings that you can
3 recall up to that point and conversations with Appleton-
4 Century personnel?

5 A There may have been additional ones with Lynne
6 Lumsden. Somewhere along the line I picked up the big books.
7 There were other books, I remember. And I don't know when
8 that was. I picked up the other work they had done. And
9 that might have been that lunchtime meeting with Lynne
10 Lumsden, it might have been an earlier one.

11 Q What other work are you referring to that they
12 had done?

13 A They had done a sociology book in this way. They
14 had done a psychology text in this way. And I took those
15 home at some stage and was very impressed with it.

16 Q Do you remember the title of those books?

17 A I think just Sociology and Psychology, respectively.

18 Q Did they supply you with any other information?

19 A There was a music book, too, a music appreciation
20 book which they had done. That was it.

21 That must have been before the meeting with
22 Lumsden and Jourard because they influenced my judgment,
23 those books.

24 Q Are there any other conversations or discussions
25 that you can recall with Appleton-Century people up to the

3

November 29, 1971 meeting?

A No. I don't recollect any. I don't recollect.

Q Would you tell me, please, what happened at the meeting of November 29, 1971?

A A lot of things probably happened. But what I remember particularly was a vivid argument about how the book should be written between Joan Winer Brown and myself.

Q What was that argument?

A I proposed a what I called constructivist philosophical approach to the book. They had not heard of this. So I spent a lot of the meeting giving them a lecture.

I remember thinking of them as a bunch of very good students. And I gave them a lecture on what a constructivist approach is as compared to the naive realistic approach. And I subsequently submitted some articles indicating my description of this. That's what I remember. Because it was a very vigorous discussion and I was impressed with their intelligence. That's what I recollect because it was sort of a lecture.

Q What did you tell them about the constructive approach?

MR. BERGER: Constructive or constructivist?

Q Constructivist.

4

1
2 A It's a philosophical approach to psychology which
3 says that psychology has to be as much concerned with the
4 assumptions that the psychologist makes in carrying out
5 his studies as with any collecting effect. This is a novel
6 thing in psychology. It's really only emerged within the
7 last -- into the body of psychology within the past six
8 years and most traditional books in psychology do not reflect
9 this approach.

10 Q Can you recall anything else you said concerning
11 this approach during your discussions with Joan Winer Brown?

12 A I probably lectured at great length. If you want
13 to see what the lectures are like, look at the first
14 chapter of the book. It exemplifies the approach. If you
15 want me to give that whole thing again, I will. But that's
16 basically what it is.

17 Q You said there was a debate on this issue?

18 A They showed not too much understanding of the
19 issue. I offered to present them with some papers, recent
20 articles which clearly outlined the differences I had in
21 mind.

22 There was an article by Reese and Overton
23 which I submitted and which is in my materials I submitted
24 to you, too.

25 That's my main memory because it was, for me,

5

an exciting issue and I recollect that very well.

Q Did you provide them with any other written information concerning the constructivist approach other than the Reese and Overton article you mentioned?

A Yes. I am not sure when I gave them -- I had a whole synopsis of a textbook which I provided them with. I don't know whether it was then or when it was. From then on I began sharing incredible amounts of materials.

Q You had a synopsis of a child psychology textbook which you provided?

A Yes.

Q Is that among the documents that you have produced?

A Yes.

Q The documents which have been organized into a number of different folders; is that correct?

A Yes.

Q Which folder contains the synopsis that you are referring to?

A It would be either the introductory one or the theoretical one. It's in the first couple of folders.

Q What did that synopsis consist of?

A It consisted of an outline of a possible textbook which I had made and earlier submitted to another publisher.

Q How long was that outline?

6

A About twenty-six pages.

Q Was it in outline form?

A Yes. Outline and with some paragraphs of orientation.

Q Professor Sutton-Smith, you described another approach during your meeting which was opposed to the constructivist approach?

A The whole of the rest of the field does not share this approach. Most psychology is what we might call a logical positivist frame since the thirties. Sort of a naive notion of a psychologist as a scientist is merely to collect and record the facts.

I was arguing in favor of another posture.

Q Can you recall any other discussion or conversation that took place during this meeting on November 29, 1971?

A No. I really can't.

Q Professor Sutton-Smith, can you recall any discussion of Mussen, Conger and Kagan during the meeting of November 29, 1971?

A Not in particular. But we did discuss other books, I think.

Q The second paragraph of the letter reads, this is the letter from Joan Winer Brown to you, Exhibit 59 for

1 identification. "As we indicated at our last brief meeting
2 the Mussen text is by far the most successful in the market."

3
4 Does that refresh your recollection as to whether
5 or not you had had a prior meeting with Joan Winer Brown?

6 A No. I don't recollect it.

7 But probably what happened was Lumsden took me
8 down and we shook hands. It was probably that sort of a
9 meeting. I was probably introduced to her by Jourard.

10 Q During that brief meeting did she mention that the
11 Mussen text was the most successful in the market?

12 A Her letter says she did. I don't recollect it.

13 Q The third paragraph of the letter reads, "We
14 would appreciate it if you would begin your criticism of
15 the competition, particularly Mussen, by looking at the
16 learning and development material in Chapter 4 and at the
17 introductory material on the prenatal period."

18 Did you review Mussen, Conger and Kagan as
19 requested in the letter of November 23, 1971?

20 A I remember reading it, yes.

21 Q You read the whole book through?

22 A Yes. Rather quickly just to see what it was
23 like.

24 Q This was between November 23rd and November 29,
25 1971?

8

Sutton-Smith

1
2 A I couldn't tell when it was. But somewhere in
3 the beginning I looked at the book.

4 Q Were you familiar with Mussen, Conger and Kagan?

5 A Not particularly, no.

6 Q Do you teach a course in child psychology?

7 A I have taught a course in child psychology for
8 twenty years.

9 Q Did you ever use Mussen, Conger and Kagan or any
10 of the editions of Mussen, Conger and Kagan?

11 A No.

12 Q Did you, as requested in this letter, focus on the
13 learning and development section of Mussen, Conger and
14 Kagan?

15 A My recollection is I focused on the learning
16 material in an article by Stevenson in the Handbook of Child
17 Psychology. Carmichael's Handbook, went into that and made
18 recommendations from that.

19 Q The letter specifically asked you for your
20 comments on Mussen's Chapter 4, on learning and development.
21 Did you review Chapter 4 of Mussen in preparation for the
22 meeting?

23 A I must have looked at it, I suppose. My recollec-
24 tion of the meeting is more of what I offered rather than
25 anything about their book.

9

1 Q Did you offer any comments at the meeting with
2 respect to Mussen's learning and development chapter?
3

4 A I don't know if I did at that meeting. But
5 consistent with the philosophical point of view I mentioned,
6 I was very concerned that development be not treated in the
7 same way as they treated it.

8 Development and learning are two quite different
9 concepts and that you couldn't reduce development to learning
10 which is, in effect, what they had done.

11 I insisted on a developmentalist point of view
12 which in the field is known as a Piagetian point of view.
13 from Piaget. And I recollect presenting them or sending
14 them notes of that sort; that this alternative point of
15 view must be reflected in the chapter. And it was.

16 Q Would you tell me, this is now, you are referring
17 to Chapter 2 of the Appleton-Century-Crofts book?

18 A I think so, yes.

19 Q Would you tell me where this point of view is
20 reflected in this book?

21 MR. BERGER: Do you want to give him a
22 copy?

23 MR. MILLER: Sure.

24 (Handing).

25 A It's in the latter part of the chapter. The

1 material on general Piaget, "The need to know," Page 45.

2 Q Is it on Page 45 or does it continue beyond
3 Page 45?
4

5 A That's where you get the main concept, anyway.

6 MR. BERGER: Is it on other pages?

7 Q Is that the two paragraphs under "Piaget, the
8 need to know"?

9 A It goes all the way through Piaget. In the
10 final paragraph on Page 47 there is a critical statement
11 of the point of view. The final paragraph. It's the
12 first paragraph, Page 47 on the left-hand side.

13 Q The material that you are referring to --

14 A Then the last paragraph on Page 49, also. That's
15 critical. Actually, that's the clearest statement of it,
16 on the last paragraph on Page 49.

17 Q If I can recapitulate to make sure I understand,
18 are you referring to the section on Piaget which goes from
19 45 to 47 --

20 A Yes.

21 Q Particularly the last paragraph of that section?

22 A Yes. Right.

23 Q And the last paragraph of the chapter which
24 appears on Page 49?

25 A Yes. The last two paragraphs, I see.

1 11

2 Q Did you discuss this at the meeting of November
3 29th or can you recall?

4 A I doubt it. I don't think so. I am not sure
5 about that.

6 I think we were into the book's construction
7 after that. I think that was just a preliminary sort of
8 orientation.

9 Q Did you have any discussion at that meeting
10 concerning the material on the prenatal period?

11 A You are talking about the meeting of the 29th,
12 is that it?

13 Q Yes.

14 A I don't recollect we did. I don't recollect that
15 meeting as the real meeting where we got going.

16 We had this sort of discussion of points of
17 view and things and at least my insistence about my point
18 of view.

19 Q When did the real meeting at which you got
20 going occur?

21 A Then I began regularly talking with Julie Small
22 in terms of on the phone and going down and seeing her.
23 And that just went on incessantly thereafter.

24 Q You referred to a real meeting at which you got
25 going. Was there such a meeting?

1 12

2 A None more real nor less than subsequent ones.

3 Q That was your testimony, Professor Sutton-Smith,
4 and I wondered what meeting you were referring to when you
5 said the real meeting at which we got going.

6 A I am not sure when I said it. Did I say it
7 before when I was referring to the orientation meeting?

8 MR. BERGER: You said after the meeting of
9 November 29th when you discussed the constructivist
10 philosophy.

11 MR. NEWITT: "That was not the real meeting
12 where we got going."

13 A Yes. After that then I started taking materials
14 to Julie. That's what I mean by getting going. I was
15 actually taking her stuff.

16 Q Did you have any discussion at this November
17 29th meeting about the managed book operation?

18 A I am not sure whether it was then or Lynne
19 Lumsden. The details or general outlines of how I would
20 proceed were certainly told me over that period of time.

21 Q What was it that was told to you?

22 A I can't recall it but that there would be
23 researchers to abstract articles, there would be writers
24 when materials were submitted to draft them, there would be
25 market research indicating what people in the field would

13

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like to have as a textbook.

And Julie would be the sort of organizing editor or something like that. Those sort of things were told me in the early parts of the process.

I rather think I knew that before I had the meeting with Julie and Winer Brown. I think I knew that before signing the contract.

Q Were you given a copy of the market research report?

A No, I wasn't.

Q Did you ever ask to see a copy of the market research report?

A I probably did. I don't recollect specifically. But I probably did in the early stages. I probably thought I was going to see everything, anyway.

They said they didn't have it ready at that stage, which was probably true. They told me of the need for greater emphasis on Piaget, which pleased me because I happened to believe that, too. That's the first thing I remembered saying from the report and I think that was good.

Q What else were you told from the report?

A I don't recollect. Really I don't.

Q Were you told that Mussen, Conger and Kagan was

1 14

2 bound to have been the leading text?

3 A It says so in the letter here. My memory is that
4 Stone and Church, they were neck and neck or something.
5 Stone and Church and McCandless third. That's my recollec-
6 tion. It's not in the letter.

7 Q Are you telling me your recollection of what you
8 were told concerning the market research report?

9 A I guess that's what it was, where it came from,
10 I suppose.

11 Q Is that your recollection, that you were told
12 that the market research report indicated that Mussen and
13 Stone and Church were neck and neck?

14 A Well, I was told. Whether it came from the
15 market research report I couldn't say.

16 The Piaget piece, I remember that. I remember
17 thinking, oh, that's a good report.

18 Q Were you told that Mussen was going to be the
19 model for this book?

20 A No.

21 Q You weren't told that?

22 A No, sir. The competition to be beaten.

23 Q But you weren't told that Mussen was going to
24 be the model?

25 A No, never told.

1 Q You testified, I believe, that you expected that
2 you were going to receive a copy of the market research
3 report.
4

5 A I suppose I did. I don't remember any particular
6 interaction, but I assumed in due course I would see it.

7 Q When you did not receive a copy of the market
8 research report did you make any inquiries as to whether
9 you would receive it?

10 A You need to realize I was hearing things from
11 the market research report through Julie. My sort of
12 curiosity decreased as information increased. I don't
13 recollect continuing to be of interest.

14 Q Professor Sutton-Smith, can you recall any other
15 conversation that took place at the November 29, 1971
16 meeting other than that which you have testified to?

17 A Not at this moment I can't, no.

18 MR. MILLER: I hand the reporter a document
19 dated November 23, 1971 from Lynne Lumsden to
20 Professor Sutton-Smith and request that it be
21 marked Defendants' Exhibit 60 for identification.

22 (A one-page document dated November 23,
23 1971 from Lynne Lumsden to Professor Sutton-Smith
24 was marked Defendants' Exhibit 60 for identifica-
25 tion, as of this date.)

1 16

2 MR. MILLER: This document came from the
3 files of Prentice-Hall.

4 BY MR. MILLER:

5 Q Is that a letter that you received from Lynne
6 Lumsden?

7 A I guess it is, yes. It looks like.

8 Q In the third paragraph of the letter she mentioned
9 that you might stop by her office on the same day that you
10 came in to see Joan Brown.

11 A Yes.

12 Q Did you do that?

13 A She said just stop at my office from time to
14 time, didn't she?

15 Q I am sorry. I misread it.

16 Did you stop into her office on that day?

17 A I have no recollection. I might have, but I
18 don't remember.

19 Q Professor Sutton-Smith, did you prepare the
20 first draft for any of the chapters of Child Psychology?

21 A No, no, I didn't. Oh, there was -- no, I
22 didn't. No real first draft, no.

23 Pages and things, you know, but never a draft.

24 Q Did you prepare the revised draft of any of
25 the chapters of Child Psychology?

* * *

MR. MILLER: I want to make sure I understand what this is, Mr. Berger.

Q Is it your testimony, then, that the material that you have provided to the best of your recollection, is the material that you furnished Julie Small?

MR. BERGER: Outside of the books?

Q Outside of the books, yes.

A Yes. To the best of my recollection, that's the stuff certainly provided.

MR. BERGER: And which you received back?

THE WITNESS: That I received back, yes.

BY MR. MILLER:

Q To the best of your recollection, did it include material that you may have consulted but was not furnished to Julie Small?

A What does that mean?

Q You may have consulted some materials in connection with your work on the book?

A Yes.

Q But that doesn't necessarily mean that that was material furnished to Julie Small.

A There would be some of that work, yes. But that wouldn't be included; is that what you mean?

Q That is what I am asking you. Does this include

only material that was furnished to Julie Small?

Let me put it the other way around.

Is what you attempted to provide us, to the best of your recollection, was the material in your file that was furnished to Julie Small?

A Yes. Sure.

Q Of the material furnished to Julie Small, was some of it supplied by other colleagues of yours?

A Yes.

Q That refers to Bloom, Birch and Reinisch; is that right?

A Yes. There may have been others but those I definitely recollect. I remember the articles. I remember the discussions. I remember handing stuff in.

Q Can you remember what material they did supply?

A It's in the interrogatory. Reinisch has a big paper on hormonal influences in prenatal development which we used extensively.

Birch is an expert in nutrition, in the early deprivation, and so on. I know I provided at least his nutrition paper which he gave me. I might have provided others, but that's the one I recollect. He is a world expert in this. He happens to work for me, or he did then.

Q To the best of your recollection, what material

3

was supplied by Bloom?

A We got an article by Bloom. Bloom actually participated in revising one of the chapters, as I recollect.

I gave her a galley and asked for her opinion. And she actually -- she added a paragraph. She actually wrote a paragraph, changed some things we had and wrote the paragraph. She is an expert on linguistics.

Q What material did she supply to you that you provided to Julie Small?

A This is difficult because I have all of her material. I don't know whether I gave any to Julie or not.

I used one of her articles in the readings, in the book of readings. I know that.

I might have provided Julie with one of her chapters, but I am not sure of that. I had all that stuff around. It's possible, but I may not have done it. I may have sort of paraphrased it myself in my discussions with Julie.

She has a distinctive point of view which we get into in the book.

Q Professor Sutton-Smith, was the material that you provided material that came from your own files?

A Do you mean I had it in the house? What do you

mean by that?

Q I meant, did you have it in your office or did you sometimes go out and Xerox papers and provide them to Julie Small?

A I don't recollect doing that, but it's not impossible.

Q Was the material you provided then material that came from your own files on child psychology?

A It comes from my collection of offprints and things like that. People like me collect offprints from everybody who does anything novel in the field. We organize them into files and when you give lectures you use your offprints. Every time you give a lecture, you reread the whole lot and give a lecture. That's the sort of stuff I use.

When I say "my files" it doesn't mean just my materials. It means the field, the literature, the domain.

Q Professor Sutton-Smith, you said in your answer to interrogatories, and I am referring again to the second full paragraph on page 2, that you consulted with Miss Small about the perspectives and contents of the chapters of the book.

A Yes.

Q Would you tell me what consultation you had with Miss Small with respect to the perspective and contents of

Chapter 1 of the book.

A That was like implementing what I have mentioned before. I provided her quite a bit of material for this. There were a number of pages and I think they are in the interrogatory.

MR. BERGER: I think they were not in the interrogatory, but in the documents.

A In the documents, yes. There was quite a bit of stuff by me on what I thought about child development, what I thought about the different models and the way people go about studying child development.

A lot of this stuff was on the phone. I discussed this and then sent stuff down. And you will find those sorts of documents.

The psychoanalytic theory of development, for example. We used my own book there. I have a book called Sex and Identity which summarizes most of the major theories in the field. And that book was available to her. And most of this stuff looks like it's right out of the book. And so on.

One can recollect by going through each part. The first page sort of states it nicely on how I think we ought to get into the developmental psychology business.

It goes on into science and takes the same notions

into history. I could go on.

Q Professor Sutton-Smith, would you turn to chapter 2, tell me what consultation you had with Miss Small concerning the perspective and content of chapter 2 of the book?

A Chapter 2 covers what we call the most orthodox part of psychology in this country, the various theories of learning. There is practically nothing new you can think about them. But you have to state it. All courses in developmental psychology and child psychology expect some treatment of conditioning and reinforcement and especially these days cognitive learning.

As I told you before, my emphasis was on making clear the difference between cognitive learning and conditioning, and getting my material on cognitive learning and getting again some of the material which is not accepted by the older text books.

Carmichael's book has the best article. There is one by Stevenson, and I suggested that this was a major source for this and every other chapter because that's a review of the field by all the experts and that's the place to derive a text book from.

Q Professor Sutton-Smith, what I am trying to get out right now is not necessarily material which you supplied, but what consultation --

MR. BERGER: Do you mean how many sessions he had?

MR. MILLER: No.

BY MR. MILLER:

Q The discussions that you had with Miss Small concerning the perspective of Chapter 2.

Is it your testimony that that related to the sections on Piaget that you have described earlier?

MR. BERGER: He also testified in his most recent answer about cognitive learning, on page 43..

A Those are the things that I particularly wanted. As I said, in the accruing of scientific endeavor they became orthodoxies. And this section is on the orthodoxies and the development and environmental conditioning.

Q Professor Sutton-Smith, would you tell me what consultations you had with Miss Small concerning the perspective of Chapter 3 of the book?

A Mainly there I remember I wanted the new material on hormones. Genetics, likewise, is a sort of area of orthodoxy that has to be covered. But we had all the material on hormone affects and that we tried to deal somewhat with the Jensen ideas which have been upsetting psychology over the past few years because of its association with race, and so on. And we did this.

Q Would you tell me what consultations you had with Julie Small concerning the perspective of Chapter 4 of the book?

A I think I should say in answer to these questions that the documents probably indicate in more detail. You are getting me to remember now a couple of years back. I can remember salient things but I am sure I had a lot more to say and the documents would include that.

Hormones and sex differences, those were important issues. I had a book published last year on sex differences. So, where ever sex differences came in I had a lot to say, for good or for bad. I am supposedly something of an authority in that area.

The hormone material comes because one of my students is doing a classic study on hormone effects, prenatally, right now. So we have been into that whole literature. That comes through in these first early chapters quite a lot.

I think in the Carmichael Handbook there were three major articles on the prenatal and infant period which survey information to date.

I was concerned for them to be up to date and the best source for that is the Carmichael Handbook.

I wanted to take them beyond that up to date source

to the latest and newest things, but any perspectives I felt needed to supplement those, that research source. That, in a sense, is general for every chapter.

Q Professor Sutton-Smith, would you tell me what consultations you had with Miss Small concerning the perspectives of Chapter 5 of the book?

A I remember discussions of the organization. I wanted a sort of tripartite organization for the different parts of the life span.

We characteristically go up to eighteen months. Then the next couple of years. I sort of insisted the new textbook have a new period there. The tripartite thing is derived ultimately from Erikson's eight stage alter ego way of cutting the human pie. I suggested that we have it that way.

Q Was it your suggestion that the first period cover up to eighteen months?

A Yes.

Q Was that suggestion adopted?

A Yes. That is a convention. Like a hundred other books did it, too. It's not really a brilliant new idea.

Q Can you recall any other discussions you had, consultations with Julie Small concerning the perspective of Chapter 5 of the book?

A No, not at this point, I can't. No.

If I had my documents in front of me I might be able to.

Q Can you tell me what consultations you had with Julie Small concerning perspectives of Chapter 6 of the book?

A The thing that was most important to me about that section was that it was two parts, language development and voluntary behavior. There was quite a controversy going on in language behavior. I wanted to take into account people who had been neglected in this area.

Voluntary behavior is my own research so I insisted this be given special billing.

Q Would you refer me to the section in Chapter 6 which deals with voluntary behavior?

A Page 170.

Q Does that continue to the end of the chapter?

A I think it does, yes.

Q You mentioned a debate concerning language that you wanted reflected in the chapter?

A Yes. The debate is between those who feel that language is prior to cognition and those who feel that cognition is prior to language. You feel that coming through in this chapter.

Q Is it a particular place in this chapter where that

theory is discussed?

A I guess in the whole section on language and a couple of sections later the section on language development. We are talking about 145 and 234.

Q I am still a little at a loss to know specifically what you are referring to. Could you turn to Chapter 6 and perhaps you could direct my attention to what portion of Chapter 6 you were referring to in mentioning this debate.

Was it language comes first or cognition comes first?

A Yes, that's the debate.

All of this is material on language. It's reflecting the field.

But, you see, the issue comes and goes. You will find that towards the end of that section. You will find the material from Bloom.

Q Where is that?

A Page 156 at the top. That documents apparently that I did provide something of Lois Bloom's. I wasn't sure whether I had it.

And then Werner and Kaplan are mentioned there, too.

Q Where?

A Same page, 156.

MR. BERGER: Page 156 is a continuation of

page 149, that being a long table between 150 to 155.

A That's right. You see, it covered the material on early development, the conventional material. Then goes into our interpretations.

MR. BERGER: Bloom also appears on 149.

Q Professor Sutton-Smith, would you tell me what consultations you had with Miss Small concerning the perspectives of Chapter 7 of the book?

A I do emphasize that you are asking me this question and I am now looking at the book and trying to recollect. That's understood, isn't it?

MR. BERGER: That is going to be reflected in the record. And the judge is familiar with the procedure in which depositions are taken.

A It would be impossible for me to remember all these conversations I had with her.

I am inferring conversations with her when I look at the book.

Q Professor Sutton-Smith, I am asking you to give me your best recollection of the consultations you had with Julie Small concerning the perspectives of these chapters.

MR. BERGER: And the witness has just made a statement of how he has answered the question and

what he is using to refresh his recollection.

A Right. In "Social Development," I was very much concerned there with the mutuality of the interaction of the mother and child, I remember. I have done quite a bit of cross-cultural research myself, so I probably had an important influence there.

I remember particularly in that chapter the prediction of behavior, the last section. I remember writing most of that myself.

Q Would you tell me which section you are referring to?

A Well, this would begin at page 211.

MR. BERGER: And continue on to the end?

THE WITNESS: Yes. And it goes to the end.

A I was very concerned throughout to not over-emphasize the determining effects of early infancy which has been again an orthodoxy in the field. I don't think the research supports it. That is, in a sense, why that section comes at the very end, that sort of having said all these things, we sort of say, be careful, they don't necessarily predict to the future in the way that many sociologists have assumed they do in the past, that which research doesn't support very strongly.

I undoubtedly had things to say in all these sections

and this chapter just as in every other. But I would have to read through the whole thing to give them to you. To do that, we could take a few weeks.

Q Professor Sutton-Smith, would you tell me what discussions, consultations you had with Julie Small concerning the perspective of Chapter 8 in the book?

A We even have a section here on how our language and cognition related, 242. I have been very concerned with the character of representation in my own research and how a child first develops that particular capacity. That's why, in a way, Piaget, I was very happy to have Piaget play such a large part in these chapters, because I feel he handled these problems more adequately than is usually the case.

Q You are describing pages 242 to 245?

A Chapter 8, wasn't it?

MR. BERGER: Yes.

A There is a big section here, for example, beginning on 229, which I remember, "Representation: Four Factors."

MR. BERGER: Beginning "Cognitive development"?

A Yes. That was a very important section to me. That was the way in which Werner and Kaplan complemented the need, the work of Piaget.

Then we go into Piaget after that. I remember that being an important emphasis in mind.

Q The first section you referred to was the section from 229 to --

MR. BERGER: 228.

Q To 230. And the second one you are referring to is from page 230?

A Then we go into Piaget after that.

Then we go to 234 to the various language theories and consider the various alternatives. Again, you will notice the role of Bloom.

Q Where is the role of Bloom discussed?

A You'll see under "Cognitive Theory," after mentioning the other theory, that's page 237, last two paragraphs.

MR. BERGER: Carried over to page 238.

A You will see us giving a perspective as one of the perspectives. But, in actual fact, it was the one I favored.

The material on negative sentences, page 241, I remember Bloom playing an important part in this particular section. He has a reference to himself at press in here. That's on the first column, page 241.

MR. BERGER: That means it is an unpublished work at the time?

THE WITNESS: It was at the time.

BY MR. MILLER:

Q Professor Sutton-Smith --

MR. BERGER: I think the witness has more of his answer.

A I think when I referred before about the language cognition --

MR. BERGER: It continues through 245.

A Right. That's another special emphasis of mine. And the following section on deficit theory, page 245. We hit the real key on the next page, 246, 247.

I do want to add to the record that these are just highlights of my participation in this book that come to me by looking at the chapters now, years later.

(CONTINUED ON NEXT PAGE.)

1
2 Q Professor Sutton-Smith, would you review Chapter
3 9 of the book and tell me what consultations you had with
4 Miss Small concerning the perspective of that chapter?

5 A Identity and sex are strong in this chapter and
6 that has always been a primary concern of mine.

7 Q Would you tell me what section of the chapter you
8 are referring to?

9 A You will see it under 260 and 278. I am looking
10 at the introduction which has got the segments.

11 Q As long as you can tell me what section you are
12 referring to. Are you referring to Identify on Page 260?

13 A Yes. And 261. It goes on to 262.

14 Q You referred to another section of the book?

15 A The section on sex typing I remember was particu-
16 larly important to me, too. That comes up --

17 Q Page 278?

18 A Yes. Right. And the development of the self
19 was another particular concern of mine.

20 MR. BERGER: That is at 285.

21 A 285.

22 Some of the recent materials, in particular
23 Michael Lewis who made quite a breakthrough on this stuff.
24 You will see that in 285. That involves the recognition
25 of yourself in the mirror and the various implications one

can draw from that.

Making choices negatively has always been a concern of mine.

There are lots of little matters but it seems to me --

Q I am asking you now about your consultations concerning the perspective of the chapter.

A Fine. You are not talking about the content, you are talking about the perspective, good.

Q Would you tell me what consultations you had with Miss Small concerning the perspective of Chapter 10 of the book?

A Yes. The literature here is divided. This is four to seven-year old period. Wait a minute. Yes, four to seven, right.

Can I go back a little? I recollect that the whole of Section 4 was there because of my insistence. Very few books. It's not conventional in psychology to have an emphasis on toddlerhood, the two to three-year olds. Often the two's are put in with the babies and the three's are put in with the early childhood.

I have done a considerable amount of research into two and three-year old children and they are quite clearly distinctive.

3

I insisted that we have a separate section for them.

MR. BERGER: By that you are referring to --

THE WITNESS: Chapter 8 and Chapter 9, the segregation of them.

Q Professor Sutton-Smith, I thought that you had said that your idea was to start up from birth to eighteen months.

A Yes. I don't know that that was distinctively my idea. You will find that right through to Chapter 7.

Q Do Chapters 5, 6 and 7 come up to eighteen months?

A That's right.

Q And 8 and 9, although it says two and three, it's actually eighteen months?

A It's eighteen months, actually. You can't pin it down. But that's the time when representative processes, representative play occurs. A number of critical human functions come into play at that time. That's the reason for the division.

Any division of years of age is arbitrary. But there are some novel functions. Children begin to think in the way we talk about thinking as showing images in the head. Anyway, that was a perspective I should have mentioned. There should have been a two to three period

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4

as distinct from the four through seven period and the birth to eighteen months part.

Q I had figured that it covered up to age two, but that is not right; is that correct?

A If you see here some of the studies go to eighteen months, some go to two years old. Because one makes the decision to cut them that way doesn't mean that's the way it is.

But the decision is to begin with the first eighteen months. Then the rest is eighteen months to three years old.

You would be a fool if you made these distinctions. The growth of a child is a gradual thing. It's the classification of the psychologist writing about it which makes the division.

Q Would you tell me what the next age group is?

A The next period is four to seven.

And I see that as a very distinctive period again because there are a whole lot of novel things that happen in this time period.

Q Would you tell me the consultations that you had with Julie Small concerning the perspective of Chapter 10 of the book?

A There is a basic clash, again theoretically,

between those who think that the change -- there are very important changes that go on in terms of thinking. By the end of this period the child can read, do arithmetic, some of the operations we recognize as the mind at work come into being.

Part of that, children are at first very hard to understand because they don't have the consistency, the logic. This is the period of transition. The argument is how do you make the transition, how do you get from one to the other. The argument is how do you get people to make it.

The major -- a major question for this period is how do you think about that. That's where we get the mechanistic and the organismic models of how this change takes place. There are quite different theoretical points on this.

Differences in theory are not always clear in the materials of child psychology. But in this issue they are. This chapter, for example, compares Piaget, who is the organismic, in traditional philosophical terms, his eyes are in the head. As compared to children developing the bits and pieces that add up to a hierarchally more complex organization.

Q Could you tell me where in this chapter that comparison is set forth?

A Where it talks about Piaget you find the one point of view and looking at the other materials on mental imagery and problem-solving process, this represents the alternative point of view. You will see right in the first page --

MR. BERGER: 299.

A 299. The issue begins to be stated.

Then we have Piaget's point of view on it. That begins on Page 301 and really continues all the way through to 306.

You will see on 306 two sentences there under "Problem-Solving," which says, "Piaget favors a more unified, global view of the child's cognitive development than most investigators. Others have taken a more analytic approach, identifying more specific contributing variables such as vocabulary, attention and memory."

And then we go on with others. That continues with 306 to 315.

Q That is up to "Mental Imagery"?

A Up to "Mental Imagery."

Then we get back to Piaget again with "Mental Imagery." We come back to his point of view on this.

Then we deal with Werner. Wherever you see the

1 7
2 name Werner you know that my hand has been at work very
3 strongly, Page 319. I wanted to, in terms of perception,
4 again, you are sort of contrasting various points of view.

5 The stuff on Kellogg and Gibson and Werner, I'm
6 particularly concerned with children's development through
7 art. And that's reflected in a way that this material on
8 perception is arranged there.

9 Q Would you identify by the page section?

10 A Yes. Sorry. The whole stuff on perceptual
11 growth, 317 through, so that would be -- that's the general
12 perspective.

13 And then the particular perspective on Piaget
14 and Werner and the perceptual stuff I remember particularly
15 emphasizing certain perspectives there.

16 Q I am not sure what you are referring to.

17 A That's in Chapter 10. I am just repeating what
18 I have said to you.

19 Q You are repeating stuff that has already been
20 covered?

21 A Yes. That we have already covered.

22 Q Have you finished your review of Chapter 10?

23 A Yes.

24 Q Would you tell me what consultations you had
25 with Miss Small concerning the perspective of Chapter 11 of

the book?

A One of my concerns has been with development of a social organization which also occurs between four and seven, social organization. You will find that comes in 338. After the introduction we get into how not only do children begin to think, you see, in sort of a systematic way by seven, but also by seven they have got systematic order, they are able to run group life on their own.

In a thoroughly systematic way they can play games. The discussion of how they do that is very much a discussion of how peers work together. How they work out dominance, subordination, how they work out the questions of power. You will find that, that was in the four to seven period, a particular emphasis that I wanted there. There was a parallel between both processes, the acquisition of systematic thinking and the acquisition of systematic organization. You will find that from 343 and 354. These are particular concerns of mine.

Pass on to some of Hartup's material. That's not a perspective. That's somewhat a literature. The rest of this represents a review by Hartup.

Another special emphasis of mine comes on 356 where we get to games. I have written about four books on games, five books on games. That's the end of this

period. By the end of this period children can actually play games in an autonomous way. Page 356.

One of the Ph.D. students is doing a developmental study of defense mechanisms and I think that's probably why we have that there. 360, 362. There are critical shifts in the way in which children use those and it begins to show in this period, also.

Okay. That's all that is special, as I recollect.

Q Would you tell me what consultations you had with Julie Small concerning the perspective of Chapter 12 of the book?

A Initially I wanted some of my stuff on games, more of my stuff on games. It seems to me the thing that is missing from the literature that I pressed was the importance of having sections on social cognition. You will see that beginning on Page 392. That was one of the most important emphases I made.

What's happening in the literature is a coming together of material. Let's see. It's 392, 397. Then you see I have taken the rules in peer group and direction which is the way one talks about games. I even quote myself on 399 right through 400. That section goes to 400 from wherever I began there. That was one important emphasis on this confluence between our study of cognition

1 10

2 and our study of social behavior. You can't pull them
3 apart.

4 I also wanted and have in this chapter the Piagetian
5 stuff on moral development. That's been a big upsurge in
6 the literature, too. That is mentioned on 380. We begin
7 with Piaget and then go on to the moral, build on to that
8 the moral stuff.

9 MR. BERGER: The moral stuff is 383?

10 THE WITNESS: 383.

11 A 383 also includes a little bit on humor. I have
12 given pages on humor and so on and am a bit of an expert
13 of children through riddles.

14 So we get the moral development and the social
15 cognition.

16 And we go into the more orthodox material on
17 peer group development after that which depends on that.
18 The peer group development materials are based, I think, on
19 how peers come to understand each other, how they come to
20 understand rules, and you can't understand that without
21 dealing with both games and moral development, which is
22 the best evidence we have on how children organize role
23 behaviors.

24 Q Would you tell me what consultations you had with
25 Julie Small concerning Chapter 13?

1 A Here, as throughout the book, I give a strong
2 play to Erikson. I see it comes and goes here. It reminds
3 me that I had an emphasis on Erikson. I remember, too,
4 that I have always used him in lectures. I recollect,
5 too, that that was some of the market research, that
6 people in the field wanted more Erikson in their textbooks.
7 I was told that somewhere along the line.

8
9 Q You are referring to Page 415 and the material
10 beginning on Page 415?

11 A Yes, 415. He has a psychosocial theory of
12 development which is fairly general. But, lacking anything
13 else, we tend to use that as a sort of first step and
14 go on from that. That carries through to 418.

15 One of my staff has done a lot of work on moral
16 development and that's the reason for the continuing
17 emphasis on Kohlberg. On the previous chapter we emphasized
18 Piaget. In this chapter we take up the work of Kohlberg.
19 He is a major force out of Harvard.

20 Q You are referring to the paragraph on 418 that
21 deals with sex role development?

22 A Yes.

23 MR. BERGER: You mean not the paragraph
24 but the whole section?

25 Q Are you referring to the whole section?

1 A I am referring particularly to the emphasis on
2 Kohlberg.
3

4 Then it covers over to the next page.

5 MR. BERGER: What is the next page?

6 THE WITNESS: I have 420. 419-420.

7 Q Is your testimony that the emphasis on Kohlberg
8 carries over to Page 420?

9 A Page 420, yes. Moral development.

10 We go back to some of those issues that were
11 raised in the first chapter on moral development.

12 On Page 425 we have material on birth order. I
13 wrote a book on birth order. That naturally has to be
14 given some play. That's Page 425.

15 Q What was the title of that book?

16 A The Sibling. It's referred to on Page 426,
17 Sutton-Smith and Rosenberg. I give that some emphasis there.

18 I guess that's all that I recollect about special
19 perspectives, special emphases.

20 Q Now you are up to Chapter 14. Could you tell me
21 the consultations that you had with Julie Small concerning
22 the perspective of Chapter 14?

23 A Well, I was concerned here -- adolescence gets
24 again so much more theoretical -- adolescence gets to be
25 so much more of a theoretical matter here. We are back to

13

adolescence here. We were up to eight or twelve. Now we are into puberty plus.

My stress was on emphasizing the theoretical nature of the different approaches. For example, in this chapter we talk about crisis and non-crisis views. There has always been a split in the field in terms of whether people see adolescence as a time of great difficulty versus those who don't see it so.

I remember insisting again on having Piaget's treatment of formal operations. We have that on Page 459 with some of the follow-up material on that going on through 462.

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(Continued on next page.)

(A recess was taken.)

(The deposition reconvened with all parties
present.)

B R I A N S U T T O N - S M I T H, resumed, having
been previously duly sworn, testified further as
follows:

EXAMINATION BY

MR. MILLER:

Q Would you please tell me what consultations you
had with Julie Small concerning the perspectives of Chapter
15 of the book?

A In Chapter 15, as in the prior chapter, I was very
concerned that the role of theory in adolescent development
be spelled out quite clearly. And you will find in this
chapter, beginning page 479, going through to 481.

You will find the sort of distinction between the
types of approach to development which is emphasized in the
introduction. There are different models of development and
you can see these here at work in adolescent psychology,
also.

Q When you say the introduction, you are referring to
the introduction to what?

A Chapter 1.

Q Chapter 1 of the book?

A Yes. Chapter 1 of the book, right.

I notice some cross-cultural data here. It reminds me of another perspective that I had emphasized throughout and didn't recollect before.

I have done cross-cultural studies. I notice we even have the Maori here, which is the Maori of New Zealand, on page 482. I was also concerned that cross-cultural data be brought to bear where ever possible.

Then you will notice that when we get into adolescent values, again we have a contrast of theoretical approaches. On page 483 and 484 we compare Freudian versus Piagetian points of view on adolescent values.

On page 486, again, in the material on self-concept and self-esteem, we have again a concept of theoretical views. Piaget, Lewis and Werner. And we have Erikson again, "Erikson-inspired research," bottom of page 487. We have given him a lot of importance in the book and we make some attempt here to follow up some of the research to which his ideas have led.

The section on maturity.

Q What section is that?

A On page 497 where we sort of sum up the book.

My recollection is that I wrote all of that myself. Nothing I wrote was automatic. It went through Julie, through

1 the writer, so I can't swear that I wrote it. I know that I
2 typed out a number of pages on these different types of
3 approaches, which I submitted to her. It's probably not the
4 same as this, but it was the sort of origin for it. And it
5 was sort of a final overall perspective on the book.
6

7 Q Professor Sutton-Smith, you have mentioned several
8 times that by reviewing your documents you might be able to
9 provide us with additional information on the perspectives
10 of the various chapters which you discussed and consulted on
11 with Miss Small.

12 Would you be able to review your documents during
13 the luncheon recess and provide us with any supplemental
14 or additional information --

15 MR. BERGER: How long do you envision his
16 luncheon recess?

17 Q How long will it take you to review your files
18 and provide us with any additional testimony concerning the
19 perspectives that you discussed with Julie Small with respect
20 to the book?

21 A It could take days to do a thing like that, couldn't
22 it? I don't mind doing it but you either get a quick whip-
23 through or get me to go through it carefully and think about
24 each piece. That could take time.

25 Q You would need several days in order to do this?

* * *

two days. We are not sure.

MR. BERGER: I will get it.

THE WITNESS: I think that will be helpful.

BY MR. MILLER:

Q Professor Sutton-Smith, you have referred to researchers in your testimony.

What, if anything, were you told concerning this function in the preparation of the book?

A That they would carry out assignments that either I or Julie gave them.

I was constantly giving her assignments. I would say, we need a summary of this book or this monogram, or something like that.

Q Did you have personal contact with any of the researchers?

A Yes. One definitely. There were a number of my students who worked for Appleton-Century. I don't think most of them worked on my project, though.

But one did, definitely, one Lee Peterson.

Q Did you have contact with her --

A This is a man, Lee.

Yes. He was the only one that worked directly with me. His job was the case studies. And I provided him with the books, some twenty books. The idea was to have --